

CONTUMPT
OF COURT
ADAM J. WHITE

the weekly standard

JUNE 20, 2016

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MISSILES EVERYWHERE

The next Israeli-Hezbollah
conflict will be awful
BY WILLY STERN

Hezbollah supporters
hoist the party's flag
atop rocket models
near Tyre, Lebanon.



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There Is Nothing Like a Dame

Sometimes even THE SCRAPBOOK is mystified by certain rituals of modern American politics. Take celebrity congressional testimony, for example. Here is a photograph of Dame Helen Mirren, the British actress, taken in Washington last week. She is taking an oath not because she was being sworn into office or was a witness at somebody's trial; she was taking an oath—to tell the truth, the whole truth, and nothing but the truth—before testifying at a Senate committee hearing on pending legislation.

The bipartisan bill in question is a measure that would sweep away certain legal barriers encountered by families whose art was stolen by the Germans during World War II. This is a serious matter, of course, and the bill deserves serious consideration. But Dame Helen was invited by Schumer to testify not because her family's artifacts had once been looted but because last year she played a woman whose family's paintings had been looted, in a movie entitled *Woman in Gold*.

To be sure, Dame Helen said all the right things to the committee—"Art restitution . . . is a moral imperative"—but her testimony distracted THE SCRAPBOOK from the subject at hand and reminded us of the memorable occasion, in 1985, when then-

Rep. Tom Daschle invited four actresses who had played farm wives in movies—Jane Fonda, Sissy Spacek, Jessica Lange, and Sally Field—to testify before the Democratic members



of a House committee on Capitol Hill about the future of family farms.

The event was much derided at the time, and with good reason; but the idea stuck. Now, hardly a week goes by that some screen favorite isn't in town to testify before Congress about some political issue or pending bill. (George Clooney seems particularly ubiquitous.) There is even a name for such people: Cause Celeb.

Needless to say, after Dame Helen finished reading (under oath) her prepared text, she was peppered with questions from senators—not about Nazi cultural crimes but about her screen career. Sen. Ted Cruz was especially complimentary about her Oscar-winning performance as Elizabeth II in *The Queen* (2006).

Which gives THE SCRAPBOOK an idea. This year, many Americans have expressed dismay about a political system that leaves presidential voters with a (presumptive) choice of Hillary Clinton or Donald Trump. It has even been suggested, in certain quarters, that the whole American experiment in independence may have been a terrible error, and that direct rule from Whitehall—such as we enjoyed before 1776—would never have left us vulnerable to Clinton or Trump.

Who better to testify before Congress about all this than George III's successor, the ultimate celebrity, the genuine Queen Elizabeth II—and not some Hollywood facsimile? Her Majesty might well be amused to visit Washington and skip the state dinner in favor of a trenchant statement and some lively repartee with senators and congressmen on Capitol Hill. THE SCRAPBOOK looks forward to the administering of the oath. ♦

Historic Hillary

Hillary Clinton last week secured the number of delegates necessary to win the Democratic presidential nomination, and then she gave a speech. Did you know that she is the first woman to win the nomination of a major American party for president, and that this is a historic occasion? Fortunately, Clinton gave a speech in Brooklyn to remind us—repeatedly—of this fact.

However, for such a feminist triumph we can't help but note that the



A historic occasion, if she does say so herself

most appropriate adjective for her speech might be "flaccid." It was a

stringing together of artless, by-the-numbers sound bites, delivered with what her opponent is fond of characterizing as "low energy."

Again, Clinton strained throughout the speech to put her victory in a historic context as if her achievement were the divinely ordained culmination of America's illustrious women's rights movement, at one point even noting that her mother was born the day that the 19th Amendment was passed. Aside from being a coincidence, we're pretty sure that Susan B. Anthony and Elizabeth Cady Stanton

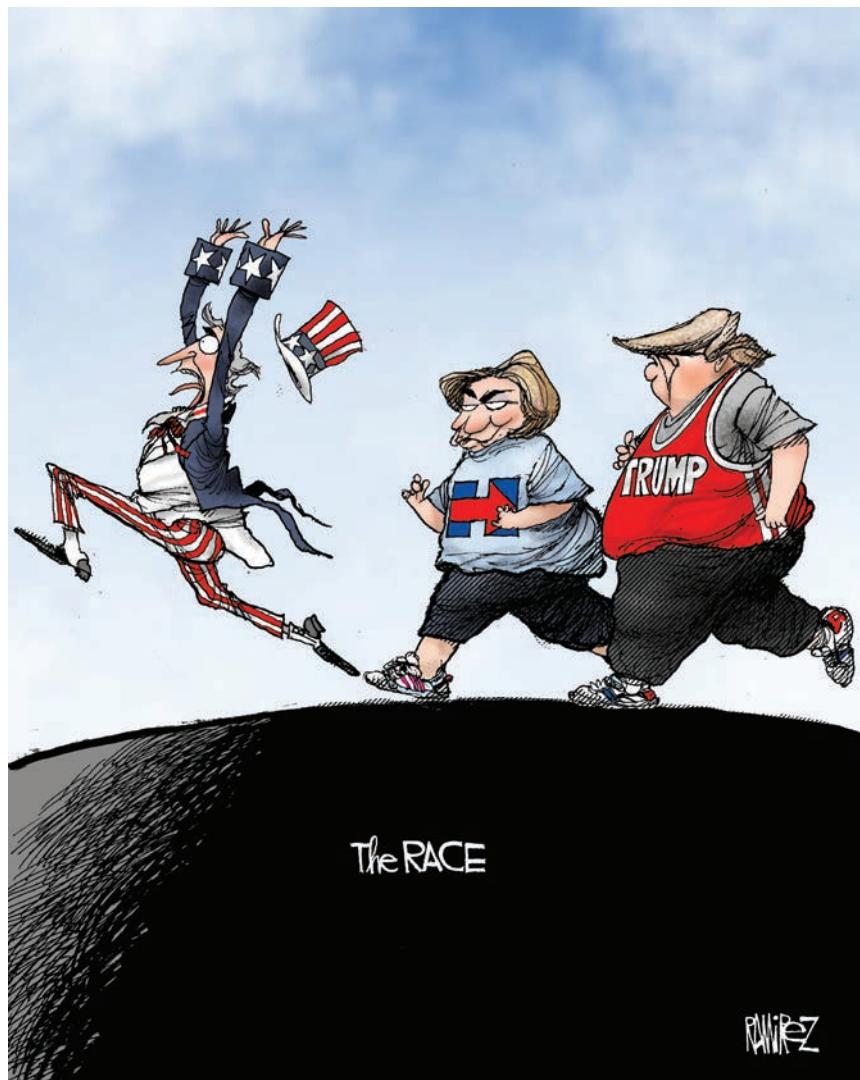
would at best have had mixed feelings about the possible first female president of the United States owing that opportunity to marrying a president who repeatedly humiliated her, leaving her to knuckle under and work to destroy the reputation of women who accused him of rape and sexual assault so she could keep climbing the rungs of power. But hey, you go, gurl!

As for the speech itself, THE SCRAPBOOK has long been of the opinion that speechwriting is a dying art. Sure, they can't all be the Gettysburg Address, but Clinton's speechwriters should be rounded up and returned to their cubicles at the greeting card company whence they came.

There were strained attempts at lightheartedness: "It may be hard to see tonight, but we are all standing under a glass ceiling right now. But don't worry, we're not smashing this one." Then there were the hackneyed exercises in repetition: "cooperation is better than conflict, unity is better than division, empowerment is better than resentment, and bridges are better than walls." Somehow, she even managed to make a completely unfair attack on Donald Trump, saying he had "attacked the press for asking tough questions" when maybe the one unequivocally positive thing you can say about the man is that he's extremely accommodating to the press. By contrast, Clinton has hardly done a press conference in six months.

And naturally, there was the sub-Churchillian attempt at a rousing conclusion: "The end of the primaries is only the beginning of the work we're called to do. But if we stand together, we will rise together, because we are stronger together. Let's go out and make that case to America." The close of the speech reminded THE SCRAPBOOK of the time *Simpsons* writers mocked Bill Clinton's speeches: "Tonight, I say we must move forward, not backward; upward, not forward; and always twirling, twirling, twirling towards freedom!"

Finally, we're sympathetic to the notion that there's a double standard for male and female leaders when it comes to appearance. But it's under-



standable that eyebrows were raised over Mrs. Clinton's Armani jacket, which retails for a mere \$12,495. If you're going to lament a lack of economic opportunity and Wall Street's greed, maybe you'd have more credibility if the frock you're wearing isn't worth what most Americans could use for a down payment on a new home. It's the kind of ostentatious display that one normally associates with a certain New York real estate mogul. ♦

Get Me Rewrite

Exceedingly popular these days in the social "sciences" are studies purporting to show that conservatives are a deranged bunch, full of outré

psychological traits that make them vulnerable to authoritarian come-ons. Many have been the social-psychologists and behavioral and political scientists who have claimed to find that conservatism is, if not exactly a form of insanity, then at least an unfortunate mental impairment.

The real impairment, however, appears to be in the statistical skills of some of these "scientists," who persist in publishing howlers. And the most recent embarrassment for the field is a doozy.

A team of academics published in the *American Journal of Political Science* in 2012 their findings that conservatives tended to score high on the psychotism scale. Now,

“psychoticism” doesn’t mean one is psychotic, but it isn’t exactly a term of endearment. According to the textbook *The Psychology of Personality*, psychoticism “is associated with the tendency to be impulsive, cold, not empathetic, unconcerned about the rights and welfare of others, and antisocial.” The very definition of a conservative!

At least that’s what Brad Verhulst and Lindon Eaves of Virginia Commonwealth University and Peter K. Hatemi of Pennsylvania State University must have thought. The good professors took a big barrel-full of preexisting study data and compared where thousands of subjects fell on the psychoticism scale (their “P-scores”) to where they fell on the political spectrum. Their analysis of the data found “that those higher . . . in psychoticism are more conservative.”

This research not only earned plaudits, it was widely quoted in other social-science journals. The only problem was that the researchers got tripped up in the “coding” of the subjects’ responses (an error that was caught by psychologists Steven G. Ludeke and Stig Hebbelstrup Rye Rasmussen). The skeptics’ exposé led the authors of the original paper to publish a correction that began: “The authors regret that there is an error in the published version of ‘Correla-

tion not Causation: The Relationship between Personality Traits and Political Ideologies.’”

Oh, and what an error it was! You see, the authors admitted getting the “coding of the political attitude items . . . exactly reversed.” In other words, “where we indicated that higher scores in Table I reflect a more conservative response, they actually reflect a more liberal response.” Instead of being associated with conservatism, high P-scores “are actually more liberal.”

Why did it take so long for such an extraordinary screw-up to be discovered? Why is it that hundreds of other social scientists cited the original research without questioning it?

Could it be that the original results fit so neatly with the prejudices of the academic left that they couldn’t imagine they were wrong? One thing is for sure: Had Verhulst, Eaves, and Hatemi found, from the get-go, that liberalism was associated with undesirable traits, their research wouldn’t just have been challenged, it would have been put through the wringer. You call that methodology? Let’s see your data! Let’s recrunch those numbers!

Instead, the left-wing monoculture that is academic social science finds it all too easy to believe the things they want to believe, even when they’ve got it exactly backwards. ♦

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Easy Rider

Last month, I had to stay a night in Oxford. Having not set foot there since my 20s, I was looking forward to it. If memory served, there were good B&Bs near the Thames and the Cherwell. There were rooms at the colleges where one could stay for cheap. Any place would serve, as long as it was close to bookstores and somewhere in the heart of “that sweet city with her dreaming spires,” as Matthew Arnold called it.

It wasn’t. “You should have planned earlier,” said the lady at the tourist information center. The city was booked. What they could offer me was a motel along the highway north of town. “You catch the 300 bus at the Tesco on Magdalen Street. Take it past the BP station to the parking lot on the A44. Then cross the parking lot—if it’s not flooded—and walk up the on-ramp to the A34. Tell the bus driver you’re looking for the Pear Tree Park & Ride.”

Was she joking? It wasn’t that she was proposing to put me up in the Oxford equivalent of a HoJo’s. It was her use of the word “ride.” When I lived in England as a young man, Americans kept an informal list of words, innocent-sounding to us, that confused, insulted, or grossed out English people. “Pants,” “shag,” “slash” . . . these were not words for idly tossing off! “Ride” was near the top of the list. Park & Ride was what young men sought to do on high school dates, the former being the means to the latter. It was not advisable, when staying at friends’ parents’ houses, to show up at breakfast and say, “I’m headin’ back to London! Anybody wanna ride?”

Nor was it considered an act of mercy for a driver to make the same offer to an old lady carrying her

grocery bags home in a rainstorm. English people said “lift.” Riding was something you did on a horse. “Ride” was a noun in theory, but it went wholly unused in practice.

I can well remember the first time I heard the term used in the vulgar sense, back in the 1980s. I had been in the Shetland Islands and was taking an overnight ferry back to Aber-



deen. Both places were centers of Scotland’s then-thriving oil industry. My sleeping cabin, a double, was empty when I boarded. But it turned out I had a bunkmate, a roustabout from Glasgow. He burst into the sleeper, drunk, 15 seconds after I had fallen asleep, in accordance with the First Law of Shared Conveyances. (The Second Law states that the last person to get into an up-elevator will always press the lowest floor.)

He asked me if I had been to the Shetlands. Since the place is on

the edge of the Norwegian Sea, on the way to Svalbard and the North Pole, and since our ship had just left Lerwick, he could not have been shocked when I answered in the affirmative.

“Did you run across any guddles, lad?” He had the Scottish habit of addressing as “lad” anyone under the age of 80.

“Any what?”

“Guddles,” he said, with a hopeful look.

“Depends what you mean by guddles,” I said.

He explained that there were two types of people. There were boys. And there were guddles.

“No,” I said. “Why do you ask?”

“Because,” he replied, his hopeful look turning to outright glee, “they really *lake to raid!*”

I now had a sense of where he was going with this, but was determined not to follow him nohow. “Ride?” I said. “You mean *equestrian*, like?”

This just lit him up. He could barely contain his laughter. “Oh, aye, lad! I suppose you could call it that!” He took equestrian for some fancy intellectual obscenity.

I took the 300 up to the Pear Tree Park & Ride. The parking lot was flooded but wadable. I thought of writing a poem that would rhyme “puddles” with “guddles.” I got a room for 75 pounds. It was down the hall from the candy machine. It had a nice view of the highway and another motel, a Holiday Inn, across the parking lot. As night fell, trucks were passing at 80 miles an hour, making drawn-out sounds of “Yee-yong! Yee-yong!” And I looked out across these very Oxford outskirts that Matthew Arnold had walked with his friend Arthur Hugh Clough: *These English fields, this upland dim, / These brambles pale with mist engarlanded.* That Starbucks. That Trax tire dealership. That Shell station.

CHRISTOPHER CALDWELL

The Trump Buffet

Several months ago it became clear that Trumpism is a corrosive force that corrupts everyone in Donald Trump's orbit. What makes Trumpism corrupting is that it is not possible to pick and choose from the Trump buffet. You cannot endorse the border fence, hope for a good Supreme Court appointment, and call it a day. Signing on with Trumpism means being forced to defend every utterance to pass the man's lips. Witness what happened last week.

Trump declared that a federal judge born in Indiana is a "Mexican" who therefore couldn't fairly adjudicate the civil case in which Trump is being sued for fraud stemming from "Trump University." This charge—that someone's race or ethnicity precludes the possibility of their being able to perform a job competently—is, as Sen. Ben Sasse said, the literal definition of racism.

Seeing this *merde* sandwich sliding toward them on the buffet, many of the Republicans who have formally endorsed Trump tried to pass. The collective objections from people such as Paul Ryan and Marco Rubio could be fairly paraphrased as, Well, yes, he may be a racist. But he's *our* racist.

That wasn't good enough for Trump, who doubled down. His campaign had initially circulated a memo to its surrogates that instructed them to avoid commenting on the fraud lawsuit. But then Trump himself held a conference call with high-level supporters and surrogates in which he told them to "Take that order and throw it the hell out." And then Trump gave his own marching orders: "The people asking the questions—those are the racists," he said. "I would go at 'em."

Much like O.J. Simpson vowing to go after the real killers, Trump and his surrogates now contend that it is people like Paul Ryan who are the *real* racists. This contention is absurd and laughable, but also instructive. It further reveals the nature of Trumpism.

Donald Trump is, at this point, only an aspirational authoritarian. But Trumpism is already an authoritarian system, demanding unthinking loyalty and enthusiasm and disregard for the truth. Remember back half a dozen scandals or so, when it was revealed that Donald Trump used to call reporters and praise himself while pretending to be Donald Trump's publicist? As Ben Domenech wrote, "This

is a thing that happened and that Donald Trump admitted happened, both in a court of law and in the press, in 1990 and in 1991."

But when the story resurfaced, Trump changed his mind and insisted not only that this thing had never happened, but that he had never previously admitted to it, either. So it was a lie, squared. And then Trump sent out Paul Manafort to dutifully insist on national television that if Trump now says he never pretended to be his own publicist, then Manafort believes him.

What's important here isn't the lie, but the fact that Trump knows he's lying, and that Manafort knows he's lying, and that they both know that *you* know they're lying, too. And that they don't care, because they believe that they hold the authority to make you acquiesce to their version of reality. In Trumpism, lying is an exercise of power. We have seen this before.

In 1978 Václav Havel wrote a famous essay titled "The Power of the Powerless." Havel considered the case of a greengrocer in the Eastern bloc who puts a sign in his shop window proclaiming "Workers of the world, unite!" Here's Havel:

Is he genuinely enthusiastic about the idea of unity among the workers of the world? . . . I think it can safely be assumed that the overwhelming majority of shopkeepers never think about the slogans they put in their windows, nor do they use them to express their real opinions. . . . He [does it] simply because it has been done that way for years, because everyone does it, and because that is the way it has to be. If he were to refuse, there could be trouble. He could be reproached for not having the proper decoration in his window; someone might even accuse him of disloyalty. He does it because these things must be done if one is to get along in life. . . .

The slogan is really a sign, and as such it contains a subliminal but very definite message. Verbally, it might be expressed this way: "I, the greengrocer XY, live here and I know what I must do. I behave in the manner expected of me. I can be depended upon and am beyond reproach. I am obedient and therefore I have the right to be left in peace." This message, of course, has an addressee: it is directed above, to the greengrocer's superior. . . . It seems senseless to require the greengrocer to declare his loyalty publicly. But it makes sense nevertheless. . . .



The greengrocer had to put the slogan in his window, therefore, not in the hope that someone might read it or be persuaded by it, but to contribute, along with thousands of other slogans, to the panorama that everyone is very much aware of. This panorama, of course, has a subliminal meaning as well: it reminds people where they are living and what is expected of them. It tells them what everyone else is doing, and indicates to them what they must do as well, if they don't want to be excluded, to fall into isolation, alienate themselves from society, break the rules of the game, and risk the loss of their peace and tranquility and security.

Havel's description of why the greengrocer puts up the sign is eerily analogous to why so many elected Republicans have endorsed Trump. As is Havel's imagining of what happens if the shopkeeper breaks with the system:

Let us now imagine that one day something in our greengrocer snaps and he stops putting up the slogans merely to ingratiate himself. . . . He begins to say what he really thinks at political meetings. And he even finds the strength in himself to express solidarity with those whom his conscience commands him to support. In this revolt the greengrocer steps out of living within the lie. He rejects the ritual and breaks the rules of the game. . . . His revolt is an attempt to live within the truth.

The bill is not long in coming. He will be relieved of his post as manager of the shop and transferred to the warehouse. His pay will be reduced. His hopes for a holiday in Bulgaria will evaporate. His children's access to higher education will be threatened. His superiors will harass him and his fellow workers will wonder about him.

All of which hits remarkably close to home for those conservatives who have criticized Trump and refused to get with the program. But the parallels continue. Havel, again:

Most of those who apply these sanctions, however, will not do so from any authentic inner conviction but simply under pressure from conditions, the same conditions that once pressured the greengrocer to display the official slogans. They will persecute the greengrocer either because it is expected of them, or to demonstrate their loyalty, or simply as part of the general panorama, to which belongs an awareness that this is how situations of this sort are dealt with, that this, in fact, is how things are always done, particularly if one is not to become suspect oneself.

Which is exactly right. Neither Paul Manafort nor Chris Christie nor any of the other political professionals who have rallied to Trump hold anything like an inner conviction about his merits. They do what he asks because they are being paid, or because they hope for a career-saving political appointment, or because it gets them into the regular rotation on cable.

And as for the rest of Trump's nominal supporters—the Marco Rubios and Mitch McConnells and Paul Ryans of the world—they do it because they are part of the panorama and because it is how things have always been done.

Yet as Havel knew, an act of rebellion from even one greengrocer can be powerfully destabilizing. He can "upset the power structure by tearing apart what holds it together" and demonstrate "that living a lie is living a lie." Because "as long as appearance is not confronted with reality, it does not seem to be appearance. As long as living a lie is not confronted with living the truth, the perspective needed to expose its mendacity is lacking. As soon as the alternative appears, however, it threatens the very existence of appearance and living a lie in terms of what they are, both their essence and their all-inclusiveness."

This, then, is how you fight Trumpism. You refuse to put the sign in the grocery store window, as honorable Republicans such as Ben Sasse, Jeff Flake, and Lindsey Graham have done. Or you take the sign down, as Mark Kirk did when he rescinded his endorsement of Trump. It would be good if Susan Collins, Ron Johnson, Kelly Ayotte, and other elected Republicans were to join their company.

It may be too late to save the GOP's 2016 prospects. It is not too late to salvage the party's honor. Trumpism corrupts; but as Václav Havel understood, it is never too late to shrug off the yoke of corruption.

—*Jonathan V. Last*

God Save the Marks?



Ryan, McCain, and Rubio

Almost a half-century ago, the great Donald Westlake published a comic mystery novel, *God Save the Mark*. It's probably not one of Westlake's very best efforts (though even a Westlake non-best-effort is awfully good). The "mark" of the title is a reasonably intelligent and likable young man who happens to have one great weakness: He's a perpetual sucker, an easy target, a credulous victim in a world full of con men and their scams.

I'm not going to spoil your enjoyment of the book by explaining how Fred Fitch, the mark, is saved from himself, though you won't be surprised that—the title of the novel notwithstanding—God does not intervene on his

IMAGES: NEWSWEEK

behalf. Indeed, help comes not from the heavens above but rather from a this-worldly tough woman with a heart of gold named Gertie Divine.

The Republican party can't count on Divine intervention of either sort to save it from Donald Trump, the con man who is the party's presumptive nominee. Republican leaders now know they've been played for marks. They've awakened to the con. They no longer believe Donald Trump's boast that "I can be more presidential than anybody"—which, as Matt Bai puts it, is like marrying a compulsive philanderer and believing him when he says, "I can be a totally faithful husband. You wait." But surely there's no need to wait any longer. After all, Trump himself said last week, "You think I'm going to change? I'm not changing."

So the question is whether Republicans who've been gullible marks will change their ways. Paul Ryan has been a politician of great integrity. Is he going to continue to deceive himself that integrity is consistent with supporting Trump? John McCain has always prided himself on putting country first. Is he going to continue to try to convince himself that the well-being of the country is consistent with his Trump endorsement? Marco Rubio has spoken movingly about the American dream. Is he going to continue to close his eyes to Donald Trump's assault on American principles?

And what about all the other Republican leaders who've been accommodating and justifying and excusing Donald Trump? Republicans have defended the rule of law against President Obama's executive overreach. Is it less endangered by Donald Trump's demagogic assault on Judge Gonzalo Curiel? Conservatives have powerfully made the case against identity politics. What purer instance of identity politics have we seen than Trump's attack on a judge solely because of his parents' country of origin? Dan Coats, the retiring Republican senator from Indiana and a decent and principled man, stood up Wednesday at the Republican senators' private lunch and delivered an eloquent denunciation of Trump for his remarks about Judge Curiel. Why not make the same set of remarks in public?

How to go about liberating the party from the con man? Perhaps the delegates at the GOP convention will decide the Party of Lincoln shouldn't be the party of marks. Perhaps a leading Republican will decide to run as an independent candidate to allow the voters not to be played as marks. Both paths are worth exploring.

But either path requires moving from laments to deeds, from complaints to actions, from taking cover to taking responsibility.

The late Donald Westlake isn't around to write a satisfying ending to the story. Either today's Republicans go down in history as hapless marks in a sad tale. Or they rise to the occasion, taking as their guide John F. Kennedy's statement, one I suspect Westlake would have endorsed, that "here on earth God's work must truly be our own."

—William Kristol

Obama Rewrites the Law

That's the good thing: As a president I can do whatever I want." Those are President Obama's words. He may have meant it as a joke, but it's true enough: He, or any president, can do whatever he wants, even unwise things—provided they are legal.



Oklahoma attorney general Scott Pruitt

And that's the problem with the president's effort to shape transgender policies for schools and workplaces across the country: He has rewritten laws originally penned by Congress and those rewrites are incompatible with real laws in the federal code. Obama's transgender diktats are another case of his overreaching presidency, which deserves more attention on the campaign trail.

Title VII of the 1964 Civil Rights Act makes it illegal for employers to discriminate invidiously on the basis of race, color, religion, sex, or national origin. And Title IX of the Education Amendments of 1972 prohibits invidious discrimination on the basis of sex in federally funded education programs and activities.

In those statutes "sex" identifies a protected class defined only in terms of one's biological sex, male or female. In its work over the years on other matters concerning discrimination, Congress has never understood "sex" in any other way than the sex someone is born with. Under Title IX, which permits institutions to differentiate intimate facilities by sex, schools have provided separate toilets, locker rooms, and shower facilities on the basis of sex. By no means has that been regarded as discriminatory.

Obama, however, has found the law of sex discrimination too constraining. And so, working with his aides but not with Congress, he has rewritten it. Under Obama's unilateral "law," sex is no longer a question of the biological categories of male and female, but of the gender one identifies with. And discrimination can occur when a school divides its bathrooms according to biological sex, failing to take gender identity into account.

The administration has written a batch of new rules and interpretations designed to advance its transgender agenda. Thus the Justice Department now holds that Title VII's prohibition of sexual discrimination in employment "encompasses discrimination based on gender identity, including transgender status." Relatedly, the

Equal Employment Opportunity Commission, which shares Title VII enforcement responsibility with the Justice Department, has said regarding “bathroom access rights for transgender employees” that the statute’s prohibition of invidious discrimination on the basis of sex applies to “gender identity.” Employers that fail to allow employees to use the bathroom and other intimate facilities of their choosing could land in legal trouble—for having discriminated on the basis of “sex,” now understood to be gender identity.

The Occupational Safety and Health Administration has published “guidance” for employers regarding restroom access for individuals who identify with the sex opposite their own. “All employees,” says OSHA, “should be permitted to use the facilities that correspond with their gender identity,” which is “internal” and may be “different from the sex they were assigned”—yes, assigned—“at birth.” Other agencies can be expected to provide similar “guidance” as the administration pushes the country to adopt its transgender policies.

A sign of the administration’s commitment to its agenda came last month when the Education and Justice departments told school administrators across the country that they must allow transgender students to use the bathroom and locker facilities of their choosing. So it is that a student whose biological sex is male but who identifies as a girl may now use the facilities for girls. Girls who feel like boys may head to the bathroom for boys. Failure to comply may result in legal action against a school and also a loss of federal funds—roughly \$1,100 per pupil.

Led by Oklahoma attorney general Scott Pruitt, 11 states have filed a lawsuit contesting the legality of Obama’s transgender project. “Obama’s rewriting of Title VII and Title IX is wholly incompatible with Congressional text,” they argue in their complaint. “Absent action in Congress,” the administration “cannot foist these radical changes on the nation.”

The litigation raises fundamental questions about separation of powers and federalism, about whether the nation is governed by the rule of law or the arbitrary rule of men. These questions deserve an airing in this year of presidential decision, yet neither of the major-party nominees is likely to address them in any critical way. Certainly not Hillary Rodham Clinton, who styles herself a progressive and can be expected to continue in the Obamian habit of ruling through executive action. And then there’s Donald Trump, who has actually lauded Obama’s unilateralism and seems to regard it as a precedent he might follow in pursuing his political goals.

At least there are a few Republican members of Congress—Mike Lee and Ben Sasse and Speaker Paul Ryan come to mind—who have challenged the legality of Obama’s overreach. May they continue to do that, and may, too, enough voters in the right states grasp the importance of retaining Republican majorities in Con-

gress. They at least would be in position to check the new executive should she or he try—Congress and the Constitution be damned—to make up rules and unmake inconvenient laws.

—Terry Eastland

The Man’s Not for Changing

In the aftermath of Donald Trump’s bigoted attacks on a federal district judge, one Republican leader after another last week condemned the candidate’s remarks and then publicly declared their hope that Trump will change.

Senator Bob Corker said Trump has two or three weeks to get his campaign on track: “This is a time for him to pivot and, by the way, I want to encourage that.” Senator John Thune said Trump is “going to have to adapt.” Senate majority leader Mitch McConnell, in an interview on CNN, denounced Trump’s comments but praised the presumptive GOP nominee for his speech on primary night and, like so many others, sounded a note of optimism. “I haven’t given up hope, but certainly last week was not a good week for Donald Trump.”

It’s time, senator. Give up.

The problem isn’t Donald Trump’s last week. It’s Donald Trump. And anyone still holding out hope that Trump will change is fooling himself.

In late April, Trump hinted at a coming metamorphosis. “I’m going to be so presidential that you people will be so bored,” he said. “And I’ll come back as a presidential person.” How’s that working out?

Maybe he meant what he said, maybe he didn’t. It doesn’t really matter. He’s shown again and again and again that he’s not going to change—that he probably couldn’t change even if he tried. It’s looking increasingly likely that general-election Trump will be the same as Republican-primary Trump, because the loutish, unstable man-child we’ve seen over the past year is the real Donald Trump.

Trump entered the presidential race on June 16, 2015, with a speech suggesting Mexicans are rapists. He spent the next year creating controversy after controversy. It’s a record of boorish behavior so familiar by now that even listing its highlights has become an election-year cliché. The toplines almost always include: denigrating POWs, ridiculing the looks of Carly Fiorina and Heidi Cruz, banning Muslims, suggesting Megyn Kelly was menstruating when she asked tough questions, and making fun of a reporter’s disability.

And it's a record so long that many of the outrages—even those that would have destroyed conventional candidacies—have already been forgotten. Who even remembers Trump's praise for "Operation Wetback," the forced deportation of illegal immigrants in the 1950s that led to scores of deaths and widespread suffering, as a model for handling immigration today? Or his belittling of Ben Carson's conversion to Christianity? Or his mocking of Mitt Romney's faith? His suggestion that Marco Rubio supports immigration reform only because his parents are Hispanic? Or his claim that Ted Cruz "appointed the judge" responsible for Obamacare? Or the time he falsely claimed that the Better Business Bureau gave its highest ratings to Trump University, dramatically producing a fax during a debate that he said proved his point? (It didn't.)

For one full year, this has been Donald Trump. And it's Donald Trump still.

After virtually everyone in public life condemned his comments on Judge Gonzalo Curiel, Trump would not apologize or retract them, saying in a cowardly statement only that he regrets they were "misconstrued." But that same day, in a campaign conference call, Trump had instructed his surrogates and aides to intensify the attacks

on the judge. Either Trump doesn't recognize his own bigotry or he thinks doubling down on it is a winning strategy.

Many Republican leaders back Trump anyway. Their reasoning is, well, complicated: Trump may be a bigot and a boor, but he's our bigot and he's our boor, so he must be president.

Some of them—perhaps most of them—understand that this argument is self-discrediting and self-debasing. They

know it's indefensible to accept and promote the Trump that they've seen over the past year, so they pretend that he might change—giving more weight to a 15-minute speech he read from a teleprompter than the multitude of disqualifying moments they've observed throughout his candidacy. "Using a prepared text last night and not attacking any other Americans was a good start," McConnell said on June 8, reiterating his support for Trump. McConnell said he's holding out hope for a "more thoughtful Trump," which is like wishing for warmer ice.

All in all, it's a triumph of hope over experience. Trump isn't going to change. And a party that works to elect him deserves its fate.

—Stephen F. Hayes

Maybe he meant what he said, maybe he didn't. It doesn't really matter. He's shown again and again that he's not going to change.

Business and the Elections—What's at Stake

By Thomas J. Donohue

President and CEO
U.S. Chamber of Commerce

What's at stake for business and the country in the 2016 elections? Just about everything, including whether we muddle along at a 1%-2% growth rate, sink further into the abyss of Obamacare, or watch the government expand endlessly and taxes increase. The future of the U.S. Supreme Court, our trading system, and American global leadership also hang in the balance.

The 2016 elections will be a reckoning for the business community. So what is the U.S. Chamber of Commerce doing about it?

The Chamber won't endorse in the presidential race—we never have and never will. However, we are critiquing the candidates' ideas as warranted. We are educating voters about which policies will create jobs, growth, and opportunity while criticizing those that will derail innovation and investment. And we are responding to attacks on business.

Our top priority is maintaining pro-business majorities in both houses of Congress, especially in the Senate. We're endorsing pro-business Senate candidates and running massive voter education campaigns on TV and on social media. We're also working closely with state and local chambers. Holding the Senate is important to everything the business community is trying to accomplish ... or stop!

On the House side, we've engaged aggressively in support of candidates who want to come to Washington to govern and solve problems. The House map has shrunk to 25–30 key races where there is a clear and compelling difference on our issues. The Chamber will be involved in many of them.

We'll close out the election cycle with a strong effort in August, September, and October to encourage early voting in targeted states and districts.

In addition, our Institute for Legal Reform has an active voter education

program in key state attorneys general and supreme court races.

We've asked our state and local chambers and all our members to be active in their local communities and not to let any attack on free enterprise go unanswered. We've asked them to stand up and say to the candidates: Our country can't succeed without business, so you must support policies that drive private sector growth.

If our government wasn't so big and powerful, perhaps this election cycle wouldn't matter so much. But because the free enterprise system is under attack and businesses are being demonized, and because we face candidates who want to expand Washington's control over the economy, this cycle matters.

It's a cliché, but this very well may be the most important election in our lifetimes.



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'Minnesota Men' on Trial

Guilty, guilty, and guilty.

BY SCOTT W. JOHNSON



Supporters and family members of Somali-American defendants protest in Minneapolis, May 9.

Minneapolis When the first group of "Minnesota men" was charged with conspiring to join ISIS in April 2015, it made front pages across the country. By the time the case went to court last month, however, the national media were almost nowhere to be found. Having attended the three-week-long trial daily, I can confidently say reporters should have paid a visit before the jury returned guilty verdicts June 3 against the three conspirators who contested the charges against them. I had to take in the evidence with my own eyes and ears to understand the gravity of the case against the "Minnesota men," as media reports impassively referred to the

Somali-American would-be terrorists. That evidence—overwhelming, devastating, shocking—was newsworthy. In his closing argument, one defense attorney professed that his client may have gotten into a situation over his head. But given the facts of the case—and the statements of those who protested that it went to trial at all—we might be in further over our heads than those convicted.

A total of 10 "Minnesota men" were eventually charged with seeking to leave the United States to join ISIS in Syria. By the time of trial, six had pleaded guilty: Zacharia Abdurahman, Hamza Ahmed, Adnan Farah, Hanad Musse, Abdirizak Warsame, and Abdullahi Yusuf. (Another was charged *in absentia* and is presumed dead in Syria.) Those guilty pleas spoke to the strength of the government's case. Nevertheless, their

friends Mohamed Farah (Adnan Farah's older brother), Abdirahman Daud, and Guled Omar chose trial in federal district court. Another friend, Abdirahman Bashir, turned informant, while others made it to Syria without being detected or charged in the process.

The "Minnesota men" have a lot in common. They are all first- or second-generation Somalis in their early 20s who freely took advantage of educational and employment opportunities in the Twin Cities. (Two of the men worked on the tarmac of the Minneapolis-St. Paul airport, while another was briefly a security guard elsewhere.) They all appear to be talented and resourceful young men. They are all observant Muslims (with an occasional weakness for marijuana). They had social lives centered on local mosques and supplemented their education with Islamic studies. They wanted to live under the caliphate declared by ISIS. They yearned to wage jihad and to die as martyrs. They hate the United States and are ungrateful for the opportunities it afforded them.

The prosecution contended that, beginning in spring 2014, the defendants made persistent efforts to depart Minnesota for Syria. The successful departure March 9 of Hanad Mohallim, who traveled from Minneapolis to Syria via Istanbul, inspired the friends he left behind. Abdi Nur and Yusuf Jama followed. Abdullahi Yusuf (already under surveillance) was stopped at the airport by the FBI. Others sought to join them by driving to San Diego and traveling to Syria via Mexico, but their plans were disrupted by Guled Omar's family.

Still stuck in the Twin Cities, those who hadn't made it out took another shot at it that fall. In November, Omar was stopped by a federal deputy marshal at the Minneapolis-St. Paul airport apparently on his way to Syria via San Diego and Mexico. Told he wouldn't be flying anywhere, he declined to talk and was sent home. (At trial, Omar testified he was headed to meet a girl he had connected with online.)

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ELIZABETH FLORES / STAR TRIBUNE / AP

A few days later, four of the group (including defendant Mohamed Farah) left Minneapolis by bus for JFK International Airport. There, “the JFK four,” as prosecutors dubbed them, were intercepted by the FBI. Asked where he was headed, Farah said he was taking a solo vacation to sunny Sofia, Bulgaria. When the FBI sent the four back to Minneapolis, Hanad Musse protested that they were “profiling” him because he’s Muslim. The triumph of assimilation! Musse had fully absorbed the American culture of victimization.

In April 2015, the defendants’ efforts to join ISIS culminated in an apparent opportunity to travel to Syria through Mexico with fake passports to be secured in San Diego. By this time, however, Abdirahman Bashir had appeared before the grand jury investigating the “Minnesota men” with the assistance of the FBI. Starting in December 2014 or January 2015, Bashir turned informant. With the FBI, he covertly recorded his friends and ultimately presented them with the chance to fulfill their hearts’ desire with the fake passport scheme. Following their road trip with Bashir, Farah and Daud turned up at their rendezvous with a man named “Miguel” to pick up their passports at a San Diego warehouse. There an FBI SWAT team arrested them. Testifying at trial, “Miguel” disclosed that he is a San Diego law enforcement officer working undercover with the FBI. Fearing that he and his friends were too “hot,” Omar had opted out of the plan and stayed behind in Minneapolis, where he was arrested.

The heart of the case brought against the defendants was conspiracy: conspiracy to provide material support to a foreign terrorist organization (by joining ISIS) and conspiracy to commit murder overseas (by fighting for ISIS). The second of the two charges carries a penalty of imprisonment up to life. To support the charges, prosecutors called Yusuf, Warsame, and Bashir to testify to the conspiracy from the inside. Yusuf and Warsame had pleaded guilty and

hoped to secure reductions in their sentences from Judge Michael Davis, who has yet to impose sentences (see “Judging the ‘Minnesota Men,’” March 21, 2016). No charges have been brought against Bashir.

Defense counsel attacked the credibility of all these witnesses with their concessions that they had given false statements to the FBI and false testimony to the grand jury. But Bashir’s recordings proved a nut they were unable to crack.

In hours of recordings, the defendants expressed their desire to join

In hours of recordings, the defendants expressed their desire to join ISIS, their regret over the failure of their previous efforts to make it out of the United States, their commitment to waging jihad against nonbelievers, and their ardent wish to die as martyrs. They thrilled to the videos of ISIS butchery in the name of Allah.

ISIS, their regret over the failure of their previous efforts to make it out of the United States, their commitment to waging jihad against nonbelievers, and their ardent wish to die as martyrs. They thrilled to the videos of ISIS butchery in the name of Allah. They talked about their communications with their friends who had made it to ISIS in Syria. And they expressed their contempt for the United States. “I can’t believe I’m driving out of the land of the *kuffar*,” Daud said during the road trip, using a derogatory term for *infidel*. “I’m going to spit on America at the border crossing. May Allah’s curse be upon you.”

In another recording, Omar revealed that Nur had commissioned him to kill 16 Americans supposedly responsible for airstrikes on ISIS in

Kobane, Syria. ISIS had come up with the names and addresses of the pilots by hacking a military database. Omar complained this information was too “hot”: He had accidentally clicked on the link to the names and addresses, making it possible for law enforcement to track him. He thought Nur should understand that it was harder for jihadists to operate in the United States than in Syria.

The recordings demolished the defendants’ claim of entrapment. Under the law, as Judge Davis instructed the jury, the defense of entrapment applies only to one who is not inclined to commit the crime in issue before he is contacted by someone acting for the government. The recordings proved beyond a reasonable doubt that defendants burned to fight for ISIS and did everything they could to make it happen before Bashir ever started working with the FBI.

Listening in the courtroom to the recordings with transcripts that made it easy to follow along was a chilling experience. If there was a star witness in the case, it was those recordings.

Also listening were the defendants’ families, who filled the courtroom each day wearing native Somali garb and hijabs. They were attended and comforted by members of the Twin Cities’ hard-left antiwar crowd, who also protested outside the courthouse on Thursday afternoons, decrying the FBI’s alleged entrapment and persecution of innocent Somalis, holding signs with lines such as “Stop Targeting Somali Youth” and “Thought Is Not Terrorism.”

FBI special agents and local members of the FBI’s Joint Terrorism Task Force meticulously investigated the case against the “Minnesota men.” Prosecutors methodically proved that case. Law enforcement efforts to discover a “recruiter” who attracted Somali Minnesotans to ISIS appear to have proved unavailing. Growing up Muslim, receiving religious education, and attending local mosques—the Al-Farooq Youth and Family Center in Bloomington was mentioned frequently—the young men appear to have needed little more

than the videos supplied by ISIS to recruit them. American culture has left many citizens with a vacuum of belief; for these immigrants, Islam filled it. The “Minnesota men” could have succumbed to drugs or alcohol in a pattern that has devastated the lives of so many American families. In this case, however, it was Islam that intoxicated them.

Judge Davis himself took up this point with Warsame in the course of his testimony as a cooperating witness. “You understood that if you committed jihad you would die,” the judge observed. “What attracted you to that?”

“The reward you would get and the fact that this life is temporary,” Warsame said. “If you were to go sacrifice yourself and go fight in jihad, the reward would be bigger. You’d save your family and save yourself.” Counter that.

The convictions promptly returned by the jury vindicate the work of the FBI and the office of United States Attorney for Minnesota Andrew Luger. Following the verdicts June 3, they held a joint press conference. Responding to the defamation of law enforcement and criticism of the informant by members of the Somali community and their friends in the peace crowd during the trial, FBI Special Agent in Charge of the Minneapolis Division Richard Thornton commented with unusual bluntness: “I find it shameful that some so-called community leaders have tried to vilify the confidential human source in this case. There is something wrong when you blame the person who did the right thing and defend those who were clearly in the wrong.” One may reasonably infer that the FBI is one institution of the executive branch President Obama has not yet corrupted. His administration has tried to muffle the Islamic component of the conflicts that confront the United States with its talk of “Countering Violent Extremism” and “Building Community Resilience.” While this troubling trial held few consolations, the absence of mind-numbing euphemisms was one. ♦

Congress and the Next President

Hill leaders map out the relationship to come.

BY FRED BARNES

If Hillary Clinton is elected president, congressional Democrats are likely to push her to move to the left and embrace much of the agenda of Bernie Sanders, her opponent for the presidential nomination. If Donald Trump wins, Republicans in Congress intend to be a check on him, pressing him to avoid impulsive decisions and go along with conservative policies.

Democrats may have an easier time. In her campaign for the nomination, Clinton proved to be malleable. She drifted toward the positions of Sanders, often without supporting them fully. He endorsed a \$15 an hour minimum wage. She called for \$12.50, but said as president she would sign a bill raising minimum pay to \$15.

On domestic policy, Clinton will have limited flexibility. She struggled to win the nomination but lost the battle over ideology to Sanders, a socialist. Now Sanders will be a formidable figure in the Senate, where the most influential Democrat ideologically is Senator Elizabeth Warren of Massachusetts. She is Sanders-like in many ways, as is the Democratic party after its lurch to the left.

Clinton is a natural follower. Her only moment of leadership as secretary of state was in the disastrous attack on Libya. A comment by the



French revolutionary Alexandre Ledru-Rollin in 1848, recalled by historian Niall Ferguson in the *Spectator*, applies to Clinton: “There go the people. I must follow them, for I am their leader.”

Trump is a harder case. Newt Gingrich, a friend and ally of Trump, says it turns out a candidate like Trump from outside normal politics really is an outsider. The *Wall Street Journal*'s Daniel Henninger calls him “the outlier of all time.” They’re both right.

Thus it has come as a pleasant surprise to House and Senate Republicans how accommodating Trump aides have been in talks about the agenda for them and Trump. The Trump folks don’t pretend that he has fashioned an agenda of his own. “Aside from border security and trade, he’s largely a blank slate,” a congressional official said.

This has become clear to those in Washington who have met with Trump in recent weeks. “He hasn’t spent much time in and around government,” a GOP adviser explains.

Trump’s representatives refer to his “principles” as their policy guide. Republican officials call it “a macro” view of policies. And it appears to have created a huge opportunity for House speaker Paul Ryan and Senate majority leader Mitch McConnell to shape the policies of a Trump administration—most of them, but not all.

Ryan has already begun. Months ago, he assigned House members to

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create a GOP plan on six issues, well before Trump became the presumptive presidential nominee. Last week, the antipoverty and national security blueprints were released to generally positive reviews. The other four planks—regulations, the Constitution, health care, and taxes—will be made public in the next few weeks.

“The issues included represent the areas of common ground the speaker has with Donald Trump, and he is confident that the plans House Republicans would pass in 2017 would be signed into law with a Trump White House,” according to the speaker’s office. Awkward wording, but at least there’s an agreement.

The national security part of the plan “reads like an attempt to soften the sharp edges of some of Donald Trump’s more controversial proposals,” wrote Karoun Demirjian of the *Washington Post*. Indeed, the attempt succeeded.

Where Trump favors a wall along the southwestern border, the Ryan proposal called for more fencing. On

NATO, which Trump claims is obsolete, Ryan wants to modernize the alliance. Still, three issues on which he and Trump disagree were left out of the plan, dubbed “A Better Way”—trade, immigrants, and entitlement reform. Also, uniting on a tax plan may be difficult.

Ryan is a strong supporter of the sweeping tax reform of 1986. Trump hates it. In his 1997 book, *Trump: The Art of the Comeback*, he makes the dubious claim that “it ended up being a disaster for both real estate and banking and caused the depression of 1990–1993.” He also complained, oddly, about the reduction in the “upper income tax rate . . . from 51 percent to 32 percent.” That, he wrote, meant developers wouldn’t invest in risky housing projects. “If the investor is taxed only at 32 percent, why bother with the risk?”

For Republicans upset about Trump’s outbursts, there’s little hope he will calm down entirely. He claims he won’t change. On foreign

affairs, another worry among Republicans who find him difficult to support, adviser Walid Phares told the *Wall Street Journal* that Trump will seek “consensus” on many international issues and modify some of his controversial ideas. We’ll see.

And on Capitol Hill, the reassuring words of GOP grandee James Baker circulated among Republicans. “I won’t get my panties in a wedge because of what I am hearing from the political candidates,” Baker told the *Financial Times*. “What they say in the campaign and what they do once they are in the White House are not the same thing. . . . Presidents can do a lot but they can only do so much through the system of checks and balances.

“We are a country of laws, limited by bureaucracy and the power structure in Washington,” Baker said. “Presidents are not unilateral rulers. If they did not know that, they will find out soon enough.” Trump’s name wasn’t mentioned, but we know who Baker had in mind. ♦

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Anyone? Anyone? Smoot-Hawley?

Trump, tariffs, and the triumph of the fat cats.

BY JAY COST

I'm going to be your champion," Donald Trump declared after he won the California primary last week. "I'm going to be America's champion. Because, you see, this election isn't about Republican or Democrat. It's about who runs this country, the special interests or the people—and I mean the American people." To take the country back from the special interests, Trump promises to impose a tariff on foreign goods, especially those made in China, on which he threatens to levy a tax of up to 45 percent.

Much has been written about the economic absurdity of such measures. The benefits of free trade have been well known since Adam Smith published *The Wealth of Nations* in 1776. What is less known is that protectionism is *politically* dangerous. The United States spent more than a century protecting domestic manufacturers from foreign competition. It was special interests that benefited, often at the expense of the American people.

Before the 16th Amendment authorized an income tax, tariffs were the federal government's main source of tax revenue. The first major tax act—the Tariff of 1789—had some protective elements to it, but its primary purpose was to raise revenue. In his *Report on Manufactures*, Alexander Hamilton called for a systematic policy of tariffs, bounties, and drawbacks to encourage industrial development, but his pleas mostly fell on deaf ears. It was not until the Tariff of 1816 that

protecting manufacturers became a major purpose of federal tax policy. Except for a brief revival of free trade sentiment in the decades before the Civil War, the country's industrial policy remained decidedly protectionist.

That's about 100 years of protectionism, and the verdict of history is



Plus ça change...

unequivocal: No single policy ever aided "special interests" more than the sort of tariffs Trump claims will help the little guy.

While protectionism is pitched as a way to guarantee stable employment and living wages, workers don't benefit directly from tariffs. Employers receive the direct benefits in the form of higher prices paid for their products, which make tariffs a massive source of corporate welfare. This creates three political problems: partiality, gamesmanship, and corruption.

First, protectionism is inevitably partial because it favors industries in competition with foreign manufacturers over those that are not. For most of its history, federal tariffs were hard on farmers, especially in the South and the West. The nation's overabundance of agricultural products meant that, with a few exceptions (among them, sugar), the country could grow its own food, with plenty left over to export. So tariffs mostly harmed farmers, raising the price of goods they had to buy, while provoking foreign governments to slap retaliatory tariffs on American agriculture. A 21st-century tariff would likewise favor producers of manufactured goods over, for instance, services and intellectual properties. Workers in the latter fields would pay higher costs to subsidize the wages of workers in manufacturing sectors. How is that fair?

Second, protectionism lends itself to political gamesmanship. The benefits of protection are concentrated in the favored industries, but its costs are diffused across society. That makes it a useful tool for politicians to secure political support. For instance, if the government slaps a tariff on foreign clothing, the domestic textile industry will notice the benefit right away while the rest of the country will barely perceive that they are paying a few more cents per shirt. This is bad policy, but it gets substantially worse when virtually every industry pleads with Congress to offer them similar morsels. That's how tariff logrolls get set in motion—as happened with the "Tariff of Abominations" of 1828 and the Smoot-Hawley Tariff of 1930.

Third, protectionism leads directly to political corruption, as members of Congress are more or less bribed by industrial magnates to keep the tariffs in place. Take the case of Senator Nelson Aldrich of Rhode Island. A key player in every tax law during his three decades (1881-1911) in the upper chamber, nobody in the Senate knew as much about the byzantine

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tariff system as Aldrich. As chairman of the Senate Finance Committee, he had a talent for transforming reform-minded tariff laws proposed by the House into protectionist bounties. His speciality was the sugar tariff: He kept duties on raw sugar low and those on refined sugar high. This benefited the American Sugar Refining Company, which remunerated him well. The chief lobbyist for the “Sugar Trust” bankrolled the senator’s stake in the street railways of Rhode Island, making Aldrich a millionaire many times over. Aldrich’s corruption may have been the most spectacular of what Mark Twain called the “Gilded Age,” but it was hardly unique. The cozy relationship between politicians and business that developed during this period was underwritten by tariffs.

What ultimately destroyed this rotten regime was the Great Depression. In response to the initial economic crisis, a Republican Congress in 1930 passed Smoot-Hawley, the most aggressively protectionist measure in a century. The Depression only worsened, and protectionism got its fair share of the blame. After World War II, U.S. industry had less need for protection—its international competitors were bombed-out and hobbled. American firms had less competition from abroad and more opportunities in foreign markets. Along the way, Congress embraced free trade and eventually transferred most of the power of trade negotiation to the president, who was better able to pursue the national interest over the parochial concerns of home-district industries.

You can’t blame Trump’s supporters for wanting to bring tariffs back. The deindustrialization of the United States has hit some communities much harder than others, and at first blush protective tariffs *seem* like a good solution. After all, if you protect domestic industries, that must also protect those who work for those industries. But it comes at a heavy cost: Protectionism is bad for good government.

If Americans are serious about taking the country back from special interests, they should reject Trump’s trade ideas. ♦

The Jewish Question

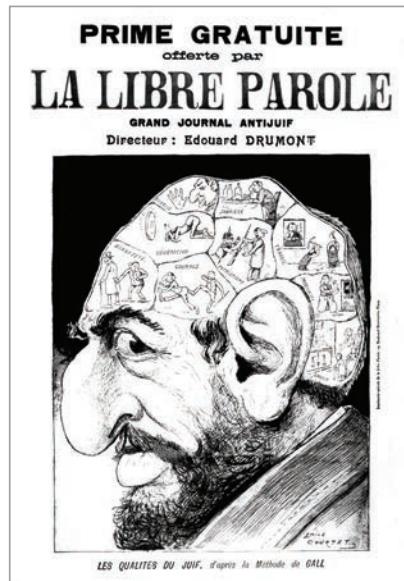
Then and now.

BY GERTRUDE HIMMELFARB

Since the *Charlie Hebdo* affair a year-and-a-half ago and the gratuitous, as it seemed, attack on the kosher supermarket in Paris, the condition of Jews in France has been a subject of much discussion and concern, and not only in France. An article in the London *Telegraph* immediately following those murderous

was all the more anxious-making because it was taking place in France, “the historic fount of liberty, equality and fraternity.” A leader of the Jewish community declared: “Jews—who have been living in France for 2,000 years and have been full citizens since 1791—now feel that they are looked upon as second-class citizens.”

But did Jews live so amicably in France for all of those 2,000 years? And was France, for Jews at any rate, the “historic fount of liberty, equality and fraternity” that the French Enlightenment presumably made her? And did Jews there become “full citizens” even in the first benign years, the pre-Terror years, of the French Revolution? Historians have long been familiar with the antisemitism of the *philosophes*, the mentors of the Enlightenment and revolution—an antisemitism that was overt and aggressive among some, more discreet, barely camouflaged among others. Voltaire was the most notable of these. The great hero of the Enlightenment repeatedly, not in private letters but in his published writings, denounced Jews as barbarous and uncivilized, avaricious and materialistic, and, of course, usurious—the latter although on other occasions he defended the principle of usury against the Catholic church, which condemned it. More ominous, in the light of subsequent history, was Voltaire’s prediction—or threat: “I would not be in the least surprised if these people [Jews] would not some day become deadly to the human race. . . . You [Jews] have surpassed all nations in impudent fables, in bad conduct, and in barbarism. You deserve to be punished, for this is your destiny.”



Ad for antisemitic publication in Paris, 1903

events was headlined “Anti-Semitism in France: The Exodus Has Begun.” In fact, both antisemitism and the exodus had begun before (and continue today). A recent article in the *Washington Post*, “Jews Anxious About Future in France,” cites the statistics of emigration resulting from a “wave of anti-Semitic violence.” This

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“Impertinent fables” was a euphemism for religion, which, for Voltaire as for most of the *philosophes*, was the original sin. Christianity, and Catholicism in particular, may have been the immediate target of “*Écrasez l’infâme*.” But Judaism was still more infamous as the progenitor of Christianity and of religion in general—hence, the primary enemy of the reason that was the guiding principle of the Enlightenment. If Rousseau and Montesquieu were honorable exceptions to the prevailing antisemitism (the latter even qualifying as philosemitic), it was because they were not committed to the ideal of reason, thus less hostile to religion in general and Judaism in particular. The missing but dominant element in that liturgy of “liberty, equality and fraternity” was reason, which, in its animus against religion, could, on critical occasions, belie or violate the other principles.

As the heir of the Enlightenment, the revolution inherited its principles—and its ambiguities. These are encapsulated in the debate culminating in the enfranchisement of Jews in 1791, the “full citizenship” cited as one of the memorable achievements of the revolution. The first article of the Declaration of the Rights of Man and the Citizen, proclaimed in August 1789, pronounced all men “free and equal in rights”; the sixth declared “all citizens, being equal in the eyes of the law, . . . equally eligible to all dignities and to all public positions and occupations.” On the face of it, Jews seemed to be emancipated as “men” and enfranchised as “citizens.” The catch came in the word “citizens.”

Shortly after the declaration, the Constituent Assembly passed decrees distinguishing between “active” and “passive” citizens, only the former having the right to vote and bear arms. In addition to such criteria as age, residence, and taxes, the active citizen also had “to be or have become French.” That clause had special pertinence to Jews, raising the question of whether all Jews, or only some, were or had become French, therefore qualifying as active

citizens. In January 1790, a debate on the subject was closed by Mirabeau, a leading member of the assembly, who declared the Jew a citizen only if he was more a man, *un homme*, than a Jew. A Jew who was more a Jew than *un homme* could not be a citizen; indeed, anyone who did not want to become *un homme* should be banished from the new society created by the revolution. The assembly concluded with a compromise provision. By a vote of 374 to 280, the rights of active citizenship were granted to the three or four thousand Sephardi Jews, specified as “Portuguese, Spanish and Avignonnais Jews.”

When the issue came up again the following year, the question focused on the much larger number of Ashkenazi Jews settled mainly in Alsace-Lorraine, who were more conspicuously Jewish. More religious than the Sephardi, less assimilated, and very much a community, the Ashkenazi were charged with being a “nation within a nation.” After a long debate, these thirty thousand Jews were declared citizens—as individuals, only if they gave up membership in a religious community. Count Clermont-Tonnerre, the deputy from Paris and the chief supporter of the motion, put the case most explicitly. Those Jews who wanted to be citizens had to “disavow their judges” and eliminate their “Jewish corporations.” “Jews, as individuals, deserve everything; Jews as a nation nothing. . . . There can only be the individual citizen.” This was the “full citizenship” that is now heralded as a landmark event in the history of Judaism and of France—Jews could be citizens, but not as Jews.

Thirty years later, after the Revolutionary and Napoleonic wars, the subject reappeared, in another country, another context, and with another cast of characters. Responding to a surge of antisemitism in Germany, the most eminent philosopher of the time came to the defense of the Jews. Having earlier propounded a philosophy that made reason (a very different reason from that of the *philosophes*) entirely compatible with

religion, Hegel now, in *Philosophy of Right*, argued for the enfranchisement of Jews as a matter of right. It is as if he had the French decree of 1791 in mind as he now insisted upon their full enfranchisement, as Jews as well as men. Even if they were regarded as a “religious sect” or “foreign race,” this did not deny the fact that “they are, above all, *men*,” and as such each “a person with rights.” To exclude them from those rights would be a violation of their humanity, and to exclude them from full citizenship a violation of the state as a political institution.

Two decades later, one of Hegel’s former disciples, Bruno Bauer (a left-wing Hegelian, as he is now known), turned against the master, reverting, in effect, to the French Enlightenment’s disparaging view of religion in general and Judaism in particular. “The Jewish Question” (“Die Judenfrage”), published as an article in 1842 and a pamphlet the following year, is known today mainly because it inspired a critique under the same title by Marx, his former pupil. But Bauer’s essay was provocative enough on its own. Decrying all religion as illusory and pernicious, he declared Judaism to be the most degraded form of religion. Against those who defended Jews on the grounds that they had been oppressed and martyred, Bauer insisted that they had brought that condition upon themselves, provoking their enemies by their stubborn adherence to “their law, their language, their whole way of life.” While warring against Christianity, they had the audacity to claim citizenship on a par with Christians, asking the Christian state to abandon its religious principles while holding firmly to their own. Since religion itself was a denial of citizenship, Jews could not claim citizenship unless they ceased being Jews.

Marx’s critique of Bauer the following year gave a new twist to the “Jewish Question.” Bauer was being insufficiently radical in assuming that Jews could be enfranchised if they freed themselves of their religion; religious emancipation fell short of “human emancipation.”

Bauer had considered only the “sabbath Jew.” The real problem was the “actual, secular Jew,” the “everyday Jew,” the Jew whose “worldly cult” was “bargaining” and whose “worldly god” was “money.” This was the “practical and real Judaism” from which not only Jews but society itself had to be emancipated. “The social emancipation of the Jew,” Marx concluded, “is the emancipation of society from Judaism.”

This was a dramatic finale to Marx’s “Jewish Question.” Jews were twice-damned, as Jews and as capitalists (“usurers,” as the stereotype had it). In retrospect, however, Bauer’s is really the more radical version, making Jewish identity—a religious, not merely social, identity—the primal source of antisemitism. It was his “Jewish Question” that underlies the equivocal status of Jews in France half-a-century earlier, as well as the perilous condition of Jews in France today.

If Americans can take any comfort in this dispiriting historical retrospect, it is in the thought of how exceptional (as we now say) American history has been—among other things, how different the American Enlightenment and Revolution were from those of the French. Far from seeing reason as antithetical to religion, American thinkers and statesmen, before and after the revolution, believed reason to be entirely compatible with religion and religion an integral part of society. It was just eight years before Bauer’s “Jewish Question” that Tocqueville decisively refuted it, at least with respect to America. Unlike the *philosophes*, he wrote, who believed that “religious zeal . . . will be extinguished as freedom and enlightenment increase,” Americans thought religion an ally of both freedom and enlightenment. The first thing that struck Tocqueville on his arrival in the United States was the religious nature of the country. “Among us [the French] I had seen the spirit of religion and the spirit of freedom almost always move in contrary directions. Here I found them united intimately with one another;

they reigned together on the same soil.” The country where Christianity was most influential, he noted, was also “the most enlightened and free.”

Tocqueville, without ever mentioning Jews, may have had the last word on the Jewish question, as he did on so many others. ♦

The Diversity Profession

Who knew hush money could be so loud?

BY JAMES PIERESON & NAOMI SCHAEFER RILEY



Students at the University of Tennessee protest changes in diversity policy, April 19, 2016.

In May, Tennessee lawmakers banned all funding for the Office of Diversity and Inclusion at the University of Tennessee, Knoxville. The \$436,000 that had been budgeted for the office will instead be put toward scholarships for minority students in engineering. The UTK diversity office was sponsoring “Sex Week,” a program of lectures and demonstrations on, well, “innovative” sex practices. Sex Week started at Yale more than a dozen years ago and has since been presented on campuses from Harvard to the University of Kentucky.

James Piereson is a senior fellow at the Manhattan Institute & Naomi Schaefer Riley is a senior fellow at the Independent Women’s Forum.

It should come as no surprise that the Office of Diversity brought embarrassment to the university. Diversity enclaves like this are supposed to promote tolerance and understanding among students, but in reality they are a main source of turmoil at schools across the country, including protests at the University of Missouri and Yale this last school year. The administrators and faculty who run these diversity programs have a vested interest in disruption—making the protests go away usually entails boosting the budgets of the diversity offices that were behind the protests in the first place. As long as schools sponsor such centers and offices, there will be no peace on the American college campus.

In the 1960s, universities caved to

the demands of radicals on campus by expanding academic departments to include women's studies, black studies, and, more recently, "queer studies." These programs are college mainstays, making up in ideological vigor what they lack in academic rigor.

But it wasn't until the '80s and '90s that universities began to expand their support of nonacademic centers offering extracurricular programs to promote what they called diversity and inclusion. In practice they did just the opposite. Universities such as Cornell offered students race-specific dormitories. The goal was to make minority students feel more at home on campus. And though schools couldn't officially discriminate regarding who was placed in these race-designated dorms, self-segregation resulted.

Today, most of the ferment on campus comes not from academic departments—even the most politically charged ones—but from diversity centers and the faculty and administrators who staff them. At Yale, for instance, the Afro-American Cultural Center hosts a "Black Solidarity" conference each year. Its Social Justice programming includes a Black Lives Matter series. The emphasis of these centers is not just academic study but social action.

Another such diversity outfit at Yale is the Intercultural Affairs Council, which sparked a

controversy last October with an email to students warning them not to wear racially or culturally insensitive Halloween costumes. One contrarian lecturer made the mistake of disagreeing. Protests ensued. By the time the fuss was over, the university had committed \$50 million for diversity training and recruiting.

Brown University, typical of the trend, recently committed \$100 million to create "a just and inclusive campus," planning to diversify not only its faculty but adding new staff to its women's center, its LGBTQ center, and its center for students of color.

There's clearly a lot of money to be made in diversity and inclusivity. The *Chronicle of Higher Education* reported a surge in demand for "diversity consultants," who "offer colleges not just specialized expertise, but also the voice of a detached third party whose recommendations are likely to be received with less skepticism than those of administrators on the defensive." Invariably, these "detached" consultants demand schools pour more funds into promoting causes that have little to do with academics and everything to do with activism.

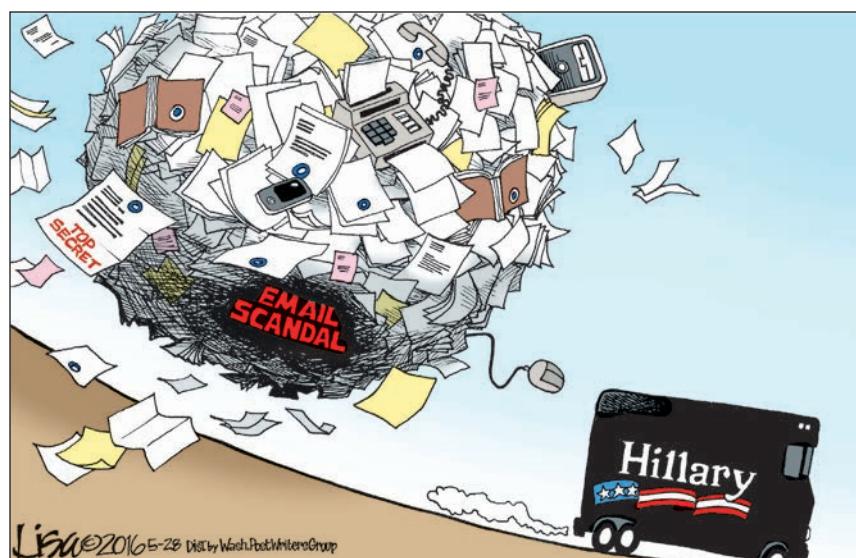
Rather than offering them more resources, college administrators should reduce their ranks and eventually get rid of them altogether. As professors Jonathan Haidt of New York University and Lee Jussim of

Rutgers recently noted in the *Wall Street Journal*, most of the diversity-promotion efforts on campus actually increase resentment on the part of both white and minority students. "There may be academic reasons for creating these ethnic centers," Haidt writes, "but if the goal of expanding such programs is to foster a welcoming and inclusive culture on campus, the best current research suggests that the effort will backfire."

Recent campus protests have all concluded with demands for more resources for these kinds of programs. No dean of diversity or inclusivity is ever going to announce that a center's goals on campus have been achieved and that it's time to close up shop. Their task, as they see it, is to promote fears that racism, sexism, and "white privilege" are rampant on campus.

Diversity centers don't hide that they are engaged in political activism. The University of Texas Multicultural Engagement Center claims its "efforts to raise awareness continue to strongly emphasize social justice and leadership development." It sponsors leadership institutes and teach-ins in order to "assist in the development of leadership skills that our students must possess in order to be effective agents of social change in the community." Such centers train students in the kinds of protests and confrontations that have raged on campuses in recent years and do so on the colleges' dime. Claremont McKenna College recently announced that it would actually pay students to work as leaders in the multicultural organizations that have been protesting the school's policies.

It is plainly absurd to claim that colleges and universities, among all institutions in American life, are bastions of racial bigotry and violence against women. What are supposed to be institutions based on reasoned discourse are increasingly consumed by irrational fears, fears stirred up by small, but now powerful and well-funded, campus groups. Instead of sending them more money, academic presidents and deans should follow the lead of the Tennessee legislature and defund them altogether. ♦



Missiles Everywhere

The next Israeli-Hezbollah conflict will be awful

BY WILLY STERN

Hezbollah has a nasty collection of more than 130,000 rockets, missiles, and mortars aimed at Israel. This is a bigger arsenal than all NATO countries (except the United States) combined. Why, a reasonable person might wonder, does Hezbollah need an offensive arsenal bigger than that of all Western Europe?

"You don't collect 130,000 missiles if you don't intend to use them," says Matthew Levitt, a counterterrorism expert at the Washington Institute for Near East Policy. Hezbollah is a well-funded, violently anti-Israel terrorist organization based in Lebanon and a puppet of the Iranian regime.

In Hezbollah's arsenal are about 700 long-range, high-payload rockets and missiles with names like Fateh-110 and Scud D. They are capable of taking down entire buildings in Tel Aviv or Jerusalem, wreaking havoc at Israel's major military bases, killing thousands of Israeli civilians, shutting down the nation's airports and ports, and taking out the electric grid. And that's just in the first week.

Former Israel Defense Forces (IDF) major general Yaakov Amidror is talking about the M-600 missile. It's a fairly accurate ballistic missile that weighs more than a Hummer H2 and carries a formidable warhead. The M-600 can also deliver chemical weapons. A single M-600 could wipe out a good chunk of Times Square and maim and kill people four football fields away from the point of impact. Hezbollah has a lot of M-600s.

Amidror, Israel's former national security adviser, is asked what the next war between Israel and Hezbollah will look like. "We are not looking for war," says Amidror.

Willy Stern, an adjunct professor at Vanderbilt University's law school, has reported from six continents.

"But suppose Hezbollah launches an advanced missile like the M-600 at the Kirya, the IDF military headquarters in Tel Aviv, or a large apartment complex in Jerusalem. Our defense technology quickly finds the launcher. It is right under a 22-story residential building in Beirut. We can now see in real time the launcher being moved back under the building to reload."

"We have just minutes to act," explains Amidror. "The IDF will have to take out the launcher because the next missile can cause enormous damage in Israel. But to take out the launcher means the 22-story building may fall. We would try to use precision-guided missiles to protect civilians but the target is hard to reach. We will try to warn the residents but the timing is tight. That building will almost certainly be hit. And the images in the international media will almost certainly be awful." But, asks Amidror, today a senior fellow at the Begin-Sadat Center for Strategic Studies, "What alternative do we have?"

No good one, since the building in the scenario described would be a legitimate military target. So say a bevy of international military law experts, including Geoff Corn of the

South Texas College of Law in Houston, who has studied IDF targeting policies: "After exhausting all feasible efforts to reduce civilian risk, IDF commanders must resolve the decisive question: Is the potential for civilian harm excessive in comparison to the advantages the attack would provide? When you talk of an M-600 in the hands of an enemy that targets vital military assets or the civilian population—even if that apartment building is full—launching the attack will be necessary to mitigate the threat."

Professor Corn is well aware of what will happen next. "The international community will look at the images and will note that the immediate cause of destruction was Israeli munitions. But—and here is the kicker—both legally and morally, the cause of these tragic consequences will lie solely at the feet of Hezbollah."



Armed Hezbollah operative, circled, conducting surveillance on the Israeli border

Hezbollah cleverly places its arsenal where any Israeli military response—even legal, carefully planned, narrowly targeted, proportionate measures—will lead to huge civilian casualties among Lebanese. Why? Hassan Nasrallah, Hezbollah’s cunning leader, sees a win-win situation. He’d like nothing better than for the IDF to kill Lebanese civilians. When these awful images appear on CNN and the front pages of the *New York Times*, Nasrallah will paint the IDF as baby-killers and worse.

And if the IDF shies away from attacking legitimate military targets in civilian sectors, then Nasrallah achieves both military and strategic advantages, and his fighters can continue to rain deadly rockets down on Israel’s civilians, infrastructure, and military installations. Says one IDF officer, “We don’t have the luxury of waiting, monitoring, considering.” Keep in mind that Hezbollah has a long history of attacking Jewish, Israeli, and Western (including American) targets, both at home and overseas.

This writer spent two-plus weeks embedded with IDF units around the country, meeting with scores of soldiers, from sergeants to generals, from front-line commanders to nerdy intelligence analysts, from patrol boat captains to fighter pilots, from civil defense experts to high-tech air defense geeks. All these military tacticians and strategists were intently focused on preparing for the next war with Hezbollah.

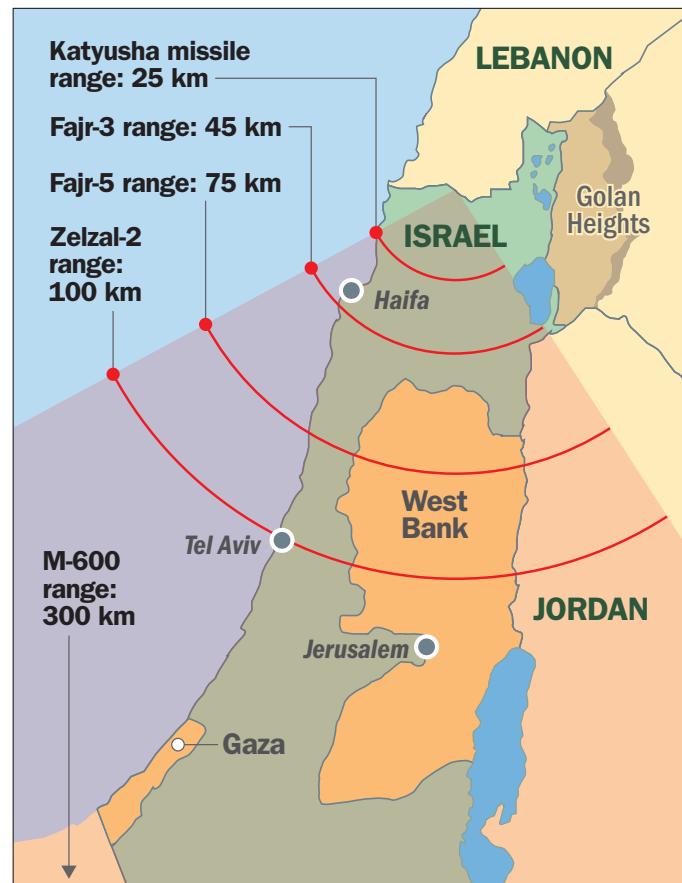
Why did the IDF pull back the curtain and provide such access not only to its top brass but also to classified documents, war-gaming exercises, and strategic projections? Because Israel wants the world to know that (1) a war with Hezbollah in Lebanon will be, unavoidably, awful; and (2) the massive collateral damage won’t be Israel’s fault. Even more than that, the IDF seems to be pleading to the international community: Do something. Stop Hezbollah. Before it is too late, and they drag the region into a bloody hellhole.

The bottom line: Hezbollah does nothing to mitigate civilian risk and everything to exacerbate that risk. The IDF does the opposite.

What will a future war look like? Some clues: Hezbollah has amassed not just rockets and missiles. Iran has supplied its favorite terrorist organization with other top-of-the-line weaponry. For military aficionados, these would include the latest guided, tank-piercing Russian-made “Kornet” missiles, SA-17 and SA-22 air defense systems, and even the “Yakhont” class surface-to-ship cruise missiles. Making matters worse for IDF planners, Hezbollah boasts a standing army of more than 10,000 soldiers—a figure that could add two or three times that amount of reservists in the event of a war with Israel. In short, since its last major conflict with Israel in 2006, Hezbollah has dramatically increased

its combat capabilities and armory. The terrorist organization has leapt from the jayvee team to the major leagues across every fighting platform.

True, Hezbollah is stretched these days from rotating its troops into Syria. But that also means that many Hezbollah soldiers will be battle-tested and tough; some 6,000 to 7,000 of them have been fighting alongside Syrian Army regulars in an effort to prop up Bashar al-Assad, Syria’s ruthless dictator and another Iranian favorite (Iran, Syria, and Hezbollah are all led by Shiite Muslims).



Make no mistake: Should hostilities break out, there will be a deadly ground war. Aerial operations simply aren’t enough to dismantle and root out Hezbollah’s maze of underground launchers, tunnels, and infrastructure that are aimed right over Israel’s border.

No matter how brave a face the IDF leadership tries to put on, in the next conflict with Hezbollah, IDF tanks will get blown to bits, aircraft will be shot from the sky, navy patrol boats will be sunk, and the multibillion-dollar Israeli offshore gas rigs in the Mediterranean Sea could end up on the sea floor. Many young IDF soldiers will be coming home in body bags. Nothing would make Nasrallah happier. He is clear in public statements that he’d dearly like to

murder every Jew in the world but especially those in Israel. In speeches, he describes Israel as a “cancerous entity” of “ultimate evil” and joyfully calls for its “annihilation.”

Deterrence is a big part of Israel’s defense strategy; acknowledging these scenarios doesn’t sit right with many in IDF’s military structure. They don’t want to frighten Israel’s civilian population. Nor do they want to embolden Israel’s enemies. But the IDF is trying really hard to give the world a wake-up call about what’s coming down the pike.

Even in a best-case scenario for preventing Israel’s civilian casualties—meaning a vast majority of Israelis would be

Israel’s top military brass acknowledges that its high-tech missile-defense system will be “lucky” to shoot down 90 percent of incoming rockets, missiles, and mortars. Hezbollah has the capacity to shoot 1,500 missiles per day. That means 150—likely more—deadly projectiles could get through in a day. Israel’s Iron Dome, David’s Sling, Arrow 3, and other state-of-the-art systems for shooting down incoming rockets and missiles are the best in the world but imperfect. “Even with Israel’s technological superiority, it would be a major blunder to underestimate Hezbollah’s ability to do serious damage,” cautions Amos Harel, the respected military/defense correspondent for the Israeli daily *Ha’aretz*.

One irony: It’s not only those in Tokyo and Chicago and Brussels who have little idea what such a conflict will look like. Many Israelis are fairly clueless (or are well practiced in the Israeli art of trying to live normal lives surrounded by lethal enemies). Residents of Tel Aviv and Jerusalem read about recent wars in newspapers every morning while sipping latte in their favorite café.

Not this time. They will be in bunkers. Possibly for a very long time. IDF major general (reserves) Gershon Hacohen explains, “ATMs won’t work. With the electric grid out, how will Israelis get to their 30th-floor apartments without elevators? How will they cook?”

Israel will almost certainly be forced to try to evacuate most citizens in the northern part of the country. Why? Because Hezbollah’s arsenal includes about 100,000 short-range rockets aimed at schools, hospitals, and homes. These rockets—including Falaks, Katyushas, Fajr-3s, and 122 Grads—may not be particularly accurate but they’re also not in air long enough for the IDF defensive weapons systems to shoot them down. They are lethal.

Imagine if New Jersey shot more than 1,000 deadly rockets over the Hudson River into Manhattan every day. No doubt, those on the Upper West Side would also be a bit peeved. “There is no country in the world—not Israel, not the U.S., not in Europe—who would not go to war to stop a rocket barrage of that nature,” explains Nadav Pollak, formerly in an IDF intelligence unit and today a counterterrorism fellow at the Washington Institute.

Small teams of elite Hezbollah commandos will almost certainly be able to slip into Israel and may wreak havoc among Israeli villages in the north. One scenario that has IDF strategists concerned: A Hezbollah team infiltrates into northern Israel via small boat at night, kills every man, woman, and child in a remote village, and then escapes into the darkness. The public relations value to Hezbollah would be enormous. “Anything that creates fear and terror among



Above, Iranian Fateh-110 missiles—of which one variant is Syria’s M-600—in a Tehran military parade, September 2012; below, Hezbollah-bound ordnance disguised as civilian cargo and seized by Israeli Navy commandos on the Iranian ship Francop, November 4, 2009

able to get into hardened shelters before the first deadly salvo is launched from Lebanon—IDF planners quietly acknowledge that “as many as hundreds” of Israeli noncombatants might be killed per day in the first week or two of the conflict. If Hezbollah’s first missile salvos are launched without warning, the Israeli civilian death count could be 10 times higher. We’re talking grandparents and toddlers alike.

Israelis is a win for Hezbollah,” says an IDF Home Front Command senior official. Another big fear: the kidnapping of IDF soldiers, as has happened before. In fact, it was the kidnapping of two IDF soldiers on a routine patrol along the Lebanese border which triggered the 2006 conflict.

Thumbing its nose at legal and ethical norms for armed conflict, Hezbollah has strategically placed its launchers and other deadly weaponry in homes, schools, hospitals, and densely populated civilian centers throughout Lebanon. This arsenal is supposedly “hidden.” Still, the IDF knows where many of these weapons are stored and shared classified maps with me. These maps showed remarkably detailed information indicating that Hezbollah is storing its weaponry in dozens of southern Lebanese villages but also in Beirut proper, where the organization is headquartered in the densely populated suburb of Dahiya.

Amos Yadlin is the executive director of the Institute for National Security Studies at Tel Aviv University. Speaking of the latest air-to-surface guided missiles, the retired IDF major general says matter-of-factly, “JDAMs dropped from F-16s can do a lot of damage.” Given Israel’s sophisticated, high-tech war-fighting machine, Yadlin says the IDF will have “clear superiority” in any conflict with Hezbollah. Deterrence matters. Yadlin and every IDF officer I spoke to made one point clear: A war with Hezbollah may be ugly, but Israel will win. Decisively.

Military law expert Corn is among those who believe Hezbollah should be called to answer for its unlawful tactics: “Hezbollah should be pressured starting today to avoid locating such vital military assets amongst civilians.” Corn fears that “the instinctual condemnation of Israel will only encourage continuation of these illicit tactics.”

Corn is correct. Two conclusions are inescapable and well voiced by a world-weary IDF officer: “The next war with Hezbollah is going to be an absolute shitstorm. And we’re going to be blamed.”

Civilian deaths in Lebanon will be a tragedy by any standard, but they will not be Israel’s fault. The primary duty of every nation is to protect its citizens. Israel will do what any country would do if deadly rockets rain down on its cities and military bases: It will respond.

In keeping with its history, the IDF is committed to responding judiciously and well within the accepted laws of armed conflict. But the outcomes will be very different from previous conflicts. Why? Because Hezbollah’s fighting force and arsenal are those of a nation-state, but its tactics are those of a terrorist organization. Tens of thousands of Lebanese civilians will almost certainly die. The

international media—many either reflexively anti-Israel or simply naïve—will have a field day.

The IDF is smart to try to explain its side of the story in advance. At least so says retired U.S. Army major general Mike Jones, coauthor of a detailed report on the IDF’s conduct in its latest conflict with Hamas, the other terrorist organization on its border. “Despite what may have been reported on the 2014 war with Hamas in Gaza, we found that the IDF went to extreme lengths in Gaza to avoid civilian casualties,” says Jones.

Hezbollah and other radical Islamist groups are try-



Above, Hezbollah missiles are fired from the Lebanese city of Tyre into northern Israel, July 23, 2006; below, a Hezbollah militant, center, explains a Katyusha rocket launcher to touring university students in southern Lebanon, May 16, 2010.

ing to delegitimize the laws of armed conflict; this ought to be of concern to all law-abiding nations and militaries. Jones believes that the IDF (and other Western nations) is “absolutely right” to try to get out in front on the strategic messaging issue.

Yes, strategic messaging. The IDF has long operated under the presumption that being in the right was enough to carry the day in the court of public opinion. No more. Anti-Israel propaganda is everywhere. Many politicians,

journalists, academics, and policy wonks are eager to denounce Israel regardless of facts or logic.

One IDF officer pointed to another possibility, namely that many reporters and average Joes simply cannot fathom the reality of war: "When one sees civilians killed, it's natural to blame the person who directly caused their death. But in war we need to look beyond. Civilians will die, but who is ultimately morally responsible? Is it the army that is forced to target military targets hidden among civilians—and uses precision weapons and warnings—or is it the group that deliberately puts their own civilians in the line of fire?"

The IDF is aware that future conflicts with Hezbollah will be fought on at least two battlegrounds. The first,



Guarding a gas rig, at rear, in the Mediterranean

obviously, will involve guns, tanks, and fighter jets. (Or, as one IDF officer put it, "The mutual exchange of high explosives will be the name of the game.") The second front will encompass the court of public opinion. Israel is wisely opening up its second front early. When the next war occurs, the IDF will endeavor to have both law and morality on its side. Will anybody care?

"Imagine that you are sitting in Georgetown, overlooking the Potomac River, sipping a great beer, waiting for your shrimp order to arrive," says Brigadier General Mickey Edelstein, commander of the IDF National Training Center for Ground Forces. "Then the alarm sounds, and you have maybe 10 to 20 seconds to get into a shelter. If you are slow, you will be killed. The same goes for your wife, your kids. That's why we will take out Hezbollah's legitimate military targets. Lebanese civilians will need to understand that when Hezbollah uses them as military shields, they are in grave danger."

The IDF no longer distinguishes between the sovereign nation of Lebanon and Hezbollah. Here's why: The terrorist group fully controls southern Lebanon, even

to the point of limiting the movements of the Lebanese Army and also of the United Nations forces there. As well, Hezbollah holds significant positions in the Lebanese government and parliament. As such, Lebanon's infrastructure will likely be targeted. The IDF may well go after Lebanese bridges, airports, highways, and the electric grid, and IDF officials want Hezbollah to know this. Again, deterrence.

Hezbollah is also preparing, and not just missiles. I spent a morning on patrol with a senior IDF commander on the Lebanese border. We were in easy range of Hezbollah snipers. The soldier was wisely decked out in full combat gear, including helmet, Kevlar vest, and assault rifle. It's dead easy to peer across the border into the tiny Lebanese village of Ayta Ash Shab and see a Hezbollah operative, dressed like a tourist, using a telephoto lens to snap photos to monitor IDF border patrol activities. All was quiet.

One day, this border will not be so quiet. Firas Abi Ali, senior principal analyst on Lebanon for the London-based country risk consultancy IHS, rates likelihood of war between Israel and Hezbollah as "more than 50 percent" in 5 years and "more than 70 percent" within 10. A mitigating factor in the near term is the war in Syria, which keeps many of Hezbollah's best fighters occupied. But IDF planners cannot afford to think in these subtleties. "There's going to be a war with Hezbollah," says Colonel Elan Dickstein, who runs the Northern Command Training Base. "The only question is when."

One of those preparing is Colonel Tzvika Tzoron, commander of the Haifa district in the Home Front Command. He has been charged with the unenviable task of protecting Israeli citizens in the northern part of the country, including those living in villages right on the Lebanese border. "We hope to give them a few days' notice," says Tzoron. "But who knows what will happen?"

Who knows, indeed? "I go to sleep at night worried, and I wake up worried," admits Lt. Col. Ronen Markham, who runs a battalion of navy patrol boats near the Lebanese border. "I worry about what I do know and worry about what I don't. Most of the world doesn't really understand that war is ugly. War is terrible. War is bloody. War brings casualties. Lots of people—soldiers and civilians—will die. There is no way around it."

But Israel will try to find ways around it. If the IDF's conduct of war against Hamas in Gaza is any indication, the IDF will go far beyond the requirements of the international laws of armed conflict to try to protect civilian life in Lebanon. They will put their own soldiers and their own civilians at risk, in order to minimize collateral damage to Lebanese citizens. Some of the steps the IDF may take to prevent civilian casualties in Lebanon include dropping leaflets warning of impending operations, NEWS.COM

using aerial assets to monitor civilian presence, and carefully choosing weaponry whenever feasible.

Several top-notch military attorneys from around the world criticized the IDF for its actions to protect civilians in the 2014 Gaza war. But the criticism is not what you might think: These attorneys believe Israel did *too much* to protect civilian lives.

"The IDF's warnings certainly go beyond what the law requires, but they also sometimes go beyond what would be operational good sense elsewhere," says Michael Schmitt, chairman of the Stockton Center for the Study for International Law at the U.S. Naval War College. "People are going to start thinking that the U.S. and other Western democracies should follow the same examples in different types of conflict. That's a real risk." Schmitt is the author of a recent comprehensive analysis of the IDF's targeting practices.

But here's the kicker: The IDF will apply the same legal standards in any war with Hezbollah, but with very different outcomes. Why? Because Hezbollah has far more dangerous missiles and operates out of high-rise buildings. Speaking bluntly, a senior IDF officer with an intellectual bent explains, "Bizarre though it may sound, it is lawful for more citizens to die. We will be applying the same legal tests in Lebanon but with far more tragic results."

IDF Air Force lieutenant colonel Nisan Cohen winds back to the scenario of a 22-story building in Beirut with an M-600 launcher in its basement. "Even with our best precision-guided missiles and with our best efforts to avoid civilian casualties," he says, "it's very hard to just hit the basement. It's even harder for us to explain afterwards why civilians were harmed." Cohen knows that the IDF is at a competitive disadvantage in terms of telling its side of the story. Photos of destroyed buildings are dead easy to come by and tug at the emotions, while the IDF often must rely on classified information to explain a specific strike.

"We ask the world not to be fooled by propaganda and by images," says a senior IDF official. "Check the facts. Any reasonable and moral human being will determine that the IDF did the right thing in our targeting decisions. There is just a fundamental disconnect between everyday life and war. If you see a picture of a dead baby, you know that it's bad. You want to blame someone. It's nearly impossible for people to flip that switch and try to understand the legal and factual context of war."

Who gets suckered by the anti-Israel propaganda? Plenty of smart folks. Take, for example, a State Department spokesman who ought to have known better. Asked in July 2014 if the Obama administration believed Israel had done enough to prevent civilian casualties in Gaza, Jen

Psaki said: "We believe that certainly there's more that can be done." Really? What exactly? She is not alone. Listen to presidential candidate Bernie Sanders, who told the *New York Daily News* in April that it was his "recollection" that "over 10,000 innocent people were killed in Gaza." He later was forced to walk back this ridiculous statement.

Military minds, of course, know better. In November 2014, the highest-ranking officer in the U.S. military—Martin Dempsey, then-chairman of the Joint Chiefs—said that Israel went to "extraordinary lengths" to limit civilian casualties in its recent war in Gaza and that the Pentagon had sent a working team to Israel to glean what lessons could be learned from that IDF operation. Apparently, the State Department and Bernie Sanders didn't get the memo.

Yaakov Amidror recalls an event from his stint as Israel's national security adviser. In the



At left, a launch of the David's Sling missile-defense system, December 21, 2015; at right, an Iron Dome battery

late summer of 2013, United Nations secretary general Ban Ki-moon paid a visit to Jerusalem. Just prior to a planned meeting with Prime Minister Bibi Netanyahu, Amidror got an hour alone with Ban and his aide-de-camp. Amidror pulled out his laptop and presented detailed evidence of Hezbollah's deadly arsenal and the fact that it was strategically placed within densely populated civilian centers. "What do you want us to do?" asked Amidror. Ban offered no response and no suggestions. Instead, the U.N. chief continued 15 feet down the plush carpeted hallway from Amidror's office to his meeting with Netanyahu.

Is it any wonder that Israel is frustrated? Nobody, it seems, in times of peace is willing to offer Israel a constructive suggestion on how to deal with an Iranian-funded terrorist organization in possession of a massive arsenal on its northern border. But these same organizations stand front and center to criticize Israel for acting legally and proportionately for protecting its own citizens in wartime. ♦

Contempt of Court

Trump wages war on a federal judge, but will he appoint good justices?

BY ADAM J. WHITE

President Donald Trump would take the Supreme Court seriously. He would appoint solid judicial conservatives to decide cases in accordance with the Constitution's original meaning. He would not treat the federal courts frivolously, leveraging his judicial appointment power like a bargaining chip to be swapped for something more important to him. He made his career as a self-promoting deal-maker, but conservatives can trust that the Supreme Court is one of the handful of issues to which Trump is deeply committed. At the very least, conservatives will prevail upon him to keep his word on judicial appointments, despite any instincts he might have to the contrary. We just need the right lawyers populating the Trump Justice Department and his White House counsel's office, and we'll be fine.

These are among the things that many conservatives have told themselves and one another in making their peace with Donald Trump this year. And however much they might disagree with Trump on questions of policy, principles, or even character, they believe that the Court's precarious ideological balance justifies voting for Trump. Especially when the alternative—Hillary Clinton appointing two, three, or more justices—would be far worse. Conservatives were not the ones who convinced the Court to take on such an outsized role in American government and society, but they must grapple with that reality, even if it means reducing presidential elections to a contest to decide who gets to appoint two or three members of the nine-seat board that truly governs our country.

These are not frivolous arguments, given the last several decades of Supreme Court decisions—not to mention the decade to come, in which the justices will decide cases involving abortion, transgender rights, and religious freedom, to name just a few. But they do require faith that Trump actually respects both the federal judiciary and his advisers enough to heed the counsel of dedicated conservative lawyers and the conservative movement in general.

And that faith is all the harder to maintain in the aftermath of Trump's extended barrage of attacks on Gonzalo P. Curiel, the unlucky federal judge who found himself

assigned to the case of *Makaeff v. Trump University, LLC*. Trump's widely reported attacks are doubly disconcerting. First, Trump's obsession with Judge Curiel's Mexican ethnicity reflects the prejudiced mindset that conservatives have strongly and repeatedly rejected, especially in the context of judicial decision-making. And second, even setting aside the "Mexican" issue, Trump's sheer hostility toward this federal judge portends a presidency with profoundly low regard for the federal courts' proper role in our government.

The Trump University litigation began in 2010, when Tarla Makaeff filed a class-action complaint alleging that Trump violated a variety of consumer protection laws. Two years earlier, Makaeff had attended an initial Trump U. seminar, where she received a personalized letter "From the Office of Donald J. Trump." It read, in part: "My father was my mentor and he taught me a lot. Now I want to teach you how to make money in real estate. To be my apprentice you need to Think BIG and really want to succeed. More than anything, you need to take action."

Makaeff took action—she paid roughly \$35,000 for the "Trump Gold Elite Program." So did others. "Almost from its inception," a federal court of appeals later wrote, "Trump University drew public comment." And not in a good way: By 2007, "disappointed customers had begun posting complaints about Trump University on Internet message boards. Some posts alleged that Trump University programs were 'scams' that focused on 'upselling' customers to more expensive seminars and workshops." Eventually, some Trump U. students chose a different course of action—namely class action, suing Trump U. for fraud.

In fighting the lawsuit, Trump often points to the fact that Ms. Makaeff once offered a glowing testimonial. Then again, as the court of appeals observed in ruling against him three years ago, the "gist of Makaeff's complaint about Trump University is that it constitutes an elaborate scam. As the recent Ponzi-scheme scandals involving one-time financial luminaries like Bernard Madoff and Allen Stanford demonstrate, victims of con artists often sing the praises of their victimizers until the moment they realize they have been fleeced."

Litigation is no fun, except maybe for the lawyers, and so unsurprisingly Trump has tried very hard to stop the case in its tracks. He filed a defamation counterclaim against

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the plaintiffs. (Judge Curiel's predecessor allowed Trump's counterclaim to proceed but was reversed by a three-judge appellate panel that included one of the nation's most prominent libertarian appellate judges.) Trump opposed the case proceeding as a class action. (Judge Curiel ruled for him in part and against him in part.) He moved to dismiss a related class-action case. (Judge Curiel ruled against him.) Later, after the class had been certified, Trump moved to decertify the class. (Judge Curiel ruled partly in his favor and partly against him.) And in February 2015, Trump moved for summary judgment—that is, he asked the court to rule in his favor without proceeding to full discovery and trial.

Judge Curiel granted Trump's motion in part and denied it in part. In an opinion issued in November 2015, he granted Trump U. summary judgment against the plaintiffs' claims for "injunctive" relief (that is, relief that would prohibit or limit Trump University's ongoing operations). But he rejected Trump's arguments that the lawsuit could not proceed against him personally because he did not himself engage in the "core" misrepresentations alleged by the plaintiffs. To be clear, the judge did not rule that the plaintiffs had proved their case against Trump; rather, he ruled merely that the plaintiffs' claims presented genuine factual disputes between the parties, and thus summary judgment against them would be inappropriate.

Needless to say, the November 2015 ruling against Trump was of less than ideal timing for the purposes of his presidential campaign. On December 10, five days before the fifth Republican presidential debate, Trump sat in a room on the 16th floor of Trump Tower, to answer opposing counsel's questions. On January 21, 2016, less than two weeks before the Iowa caucuses, he sat in Room 6104 of the Trump International Hotel Las Vegas and answered more questions.

Given a choice, no rational person would choose to sit in a conference room and answer lawyers' tedious questions all day. Trump once tweeted that "John Oliver had his people call to ask me to be on his very boring and low rated show. I said 'NO THANKS' Waste of time & energy!" Trump surely would have preferred to give the same answer to opposing counsel's invitation. Unfortunately for him, Judge Curiel's decisions made these depositions, and the ongoing litigation, a mandatory performance. Not nice! Sad!

Donald Trump isn't the first defendant to find himself stuck in a costly, burdensome, frustrating, distracting lawsuit. Bill Clinton went all the way to the Supreme Court to prevent Paula Jones from litigating her civil lawsuit during his presidency—and he lost. Nor is Trump the first defendant to get mad about it: Years after the Supreme Court unanimously allowed the Jones lawsuit to proceed, Clinton complained to author Ken Gormley that some of the justices ruled against him "on politics,"



while the rest of the justices were simply "naïve."

But Trump's response went astonishingly further. Denouncing Judge Curiel's unexceptional decisions, Trump has asserted repeatedly that those decisions are the work of a "Mexican" judge relentlessly biased against the man who promises to build a wall on the U.S.-Mexico border.

At a campaign stop in San Diego on May 27, Trump swerved wildly from policy to an unprompted litany of complaints and accusations against Judge Curiel (which C-SPAN recorded and law professor Josh Blackman helpfully transcribed on his popular blog):

Does everybody have a little time? So I end up with a lawsuit, and it ends up in San Diego in federal court. And it's a disgrace the way the federal court is acting, because it is a simple lawsuit. . . . Everybody says it, but I have a judge who is a hater of Donald Trump. A hater. He's a hater. His name is Gonzalo Curiel. [Crowd boos.] And he is not doing the right thing. And I figure what the hell? Why not talk about it for two minutes. Should I talk about it? Yes? [Cheers.] . . .

But I am getting railroaded by a legal system, that frankly they should be ashamed. . . . We are in front of a very hostile judge. The judge was appointed by Barack Obama—federal judge. Frankly he should recuse himself. Because he's given us ruling after ruling after ruling, negative, negative, negative. . . . So what happens is the judge, who happens to be, we believe, Mexican, which is great. I think that is fine. . . . But I will say this. I think Judge Curiel should be ashamed of himself. I think it's a disgrace he is doing this. And I look forward to going before a jury, not this judge, a jury, and we will win that trial. We will win that trial. Check it out. Check it out, folks.

Trump closed by calling for an investigation into Judge Curiel: "the judges in this court system, federal court, they ought to look into Judge Curiel, because what Judge Curiel is doing is a total disgrace."

Days later, to the *Wall Street Journal*, Trump argued that Judge Curiel has "an absolute conflict" of interest in hearing the lawsuit, because he is "of Mexican heritage" and a

member of a San Diego Latino bar association, while Trump proposes to build a wall on the Mexican border. “I’m building a wall,” Trump said. “It’s an inherent conflict of interest.” To the *New York Times* he was even more blunt: “I’m building the wall, I’m building the wall,” he said. “I have a Mexican judge. He’s of Mexican heritage. He should have recused himself, not only for that, for other things.”

As these comments were met with astonished, negative responses, Trump doubled down with CNN’s Jake Tapper. “You said that you thought it was a conflict of interest that he was the judge because he’s of Mexican heritage, even though he’s from Indiana,” Tapper said.

“Okay. Yes. Yes,” Trump replied. He tried to change the subject to Hillary’s emails before eventually engaging Tapper’s questions with a series of rambling comments. “Jake, I’m building a wall, okay? I’m building a wall. I am trying to keep business out of Mexico. . . . He’s of Mexican heritage. And he’s very proud of it, as I am of where I come from, my parents.” Eventually, Trump concluded, “This judge is giving us unfair rulings. Now I saw why. Well, I want to—I’m building a wall, okay?”

He didn’t stop there—though his staff may have preferred otherwise. In a conference call on June 6, Trump urged supporters to attack Judge Curiel. When Arizona governor Jan Brewer, a Trump campaign surrogate, noted that Trump’s staff had told them to back off of this subject, he blurted, “Take that order and throw it the hell out. . . . Are there any other stupid letters that were sent to you folks?”

The next day, Trump issued a press release complaining that his attacks on Judge Curiel had been “misconstrued,” but he reiterated his charges against Curiel’s bias.

Taken together, it was an astonishing attack on a “Mexican” judge who hails, actually, from Indiana. Born in East Chicago, Indiana, Curiel is the son of Mexican immigrants (his father arrived in Arizona in the 1920s) who eventually became citizens, as the *New York Times* reported. He graduated from Indiana University law school and practiced law in Indiana and California before becoming a federal prosecutor in Southern California.

As head of the U.S. Attorney’s Narcotics Enforcement Division for the Southern District of California, Curiel helped to pursue a Mexican drug cartel “that controlled a torrent of narcotics coming into the Western United States.” One prisoner was caught on tape saying that cartel leaders had given him a green light to assassinate Judge Curiel, which caused the U.S. government to place Curiel under protection.

After an appointment to the California bench by Governor Arnold Schwarzenegger, he was appointed to the federal district court in San Diego by President Obama in 2012. Trump’s attacks already are inspiring a mob reaction. According to the *Times*, angry

Trump fans have been calling Judge Curiel’s chambers.

There is a name for this type of incident, familiar to all conservative lawyers. This is a “high-tech lynching.”

It is enough to note that Trump’s ethnic conspiracy theory is as baseless as it is abhorrent. Trump offers not a shred of actual evidence casting doubt on Curiel’s impartiality; instead, he simply asserts that Curiel is “Mexican” and that Trump wants to build a wall against Mexicans. Q.E.D. And Trump notes that Curiel is a member of a San Diego Latino bar association, the “San Diego La Raza Lawyers Association,” an ominous sounding organization until one reads the SDLRLA’s statement that it is merely “a local diversity bar association” that “is not affiliated” with the infamous National Council of La Raza.

Yet Trump’s obsession with Judge Curiel’s Mexican ethnicity highlights just how much his instincts differ from those of the conservative legal movement, for it reflects precisely the sort of prejudiced thinking that conservative lawyers have repeatedly criticized in debates surrounding the Supreme Court. Time and again in recent decades, progressives have asserted that a judge’s mindset is—or should be—tied directly to his racial or ethnic background.

The most famous example came just seven years ago, during the nomination of Justice Sonia Sotomayor. During the run-up to her nomination, the *New York Times* and others reported her 2001 speech in which she suggested that her ethnicity inherently improves her judicial quality: “I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life.” Conservatives stressed that such thinking—much like President Obama’s stated preference to appoint judges who would show greater “empathy” to particular litigants and causes—utterly misapprehended a judge’s duty to apply the law as written, without favor.

In Sotomayor’s case, when progressives tied ethnicity to judicial mindset, they meant it as a compliment. But there is a dark side to such presumptions about race and ethnicity, too, when the left attacks judges or judicial nominees whose views do not accord with what the left assumes to be the “right” mindset for such racial or ethnic groups.

Those were the prejudices that Clarence Thomas denounced during his confirmation hearing, where he felt that the tidal wave of animus directed toward him owed not just to his views, but to the fact that his views defied the stereotype of how black judges ought to think:

This is a circus. It’s a national disgrace. And from my standpoint, as a black American, it is a high-tech lynching for uppity blacks who in any way deign to think for themselves, to do for themselves, to have different ideas, and it is a message that unless you kowtow to an old order, this is

what will happen to you. You will be lynched, destroyed, caricatured by a committee of the U.S. Senate rather than hung from a tree.

Two decades later, conservative lawyer Miguel Estrada faced a similar attack when he was nominated to the D.C. circuit. According to a 2001 memorandum prepared by Democratic staff on the Senate Judiciary Committee, liberal groups singled Estrada out “as especially dangerous, because . . . he is Latino.” Other critics on the left were blunter. Rep. Nydia Velázquez complained to the *Nation* that “Estrada has no understanding of the needs and aspirations of the Latino community. He has no history of effort in trying to help other Hispanics.” Similarly, Rep. José Serrano declared that Estrada “seemed lost, like he had never been involved in any struggle to better the lives of Hispanics. He had no comprehension of Latino history and suffering.”

Again, as different as the left’s embrace of Sotomayor’s “wise Latina” remarks may seem from the left’s castigation of Thomas and Estrada (and others, including Janice Rogers Brown), they were simply two sides of the same coin. In both contexts, progressives had a fixed view of how black and Latino judges think, or at least how they should think. Conservatives rejected such characterizations, arguing that no judge’s views should be simply presumed from his racial or ethnic background, and that in any event any such influences are irrelevant to the work of a judge. Yet today Trump embraces the left’s prejudices, assuming that a “Mexican” judge is inherently incapable of neutrally deciding a case that only remotely if at all implicates Mexican interests.

But even setting aside the profoundly bigoted substance of Trump’s remarks, the mere form of his attacks should give legal conservatives pause, because they highlight the low regard in which Trump evidently holds courts in general. While, again, one might forgive Trump’s frustration in enduring a civil lawsuit, his relentless efforts to threaten and denounce the judge even while the case is pending demonstrates that Trump sees judges as but one more set of opponents to be defeated, by any means necessary.

Here, Trump mirrors no one more than President Obama, who has not hesitated to attack the Court when it suited his political interests. In the Obamacare litigation, President Obama and progressive commentators repeatedly mounted a loud public campaign against Chief Justice John Roberts, in the hopes of persuading him not to rule for the parties challenging Obama’s signature legislative achievement. Whether or not this did in fact affect Roberts’s eventual judgments, conservatives denounced what they saw as an effort to bully judges into obeisance. Would President Trump do anything less, if he feared that the Supreme Court might rule against one of his own legislative or regulatory programs? Would conservatives denounce it?

Similarly, conservatives rightly objected when President

Obama used the State of the Union address as an opportunity to blast the justices seated silently before him. He denounced them for failing to rule in his favor in the *Citizens United* case, even while mischaracterizing what the Court had actually decided. Would President Trump hesitate to demagogue the Court in similar circumstances, much as he demagogues Judge Curiel’s mundane rulings against him? And if so, would Republicans object?

If Trump is elected president, conservatives will hope that he shows a decent respect for the federal judiciary, appointing good men and women to vindicate the rule of law. And conservative lawyers will work very, very hard to make this happen. Perhaps conservatives can align political incentives to force Trump to keep his promise to appoint good judges. But Trump’s over-the-top war on Judge Curiel inspires all the more doubt that Trump will take the federal courts seriously as a co-equal branch of government, or that he will prioritize the appointment of judges who place the rule of law above, say, personal or political loyalty.

Some might respond that even if President Trump treats the federal judiciary no better than Defendant Trump treats Judge Curiel, it is a price that must be paid to save the Supreme Court from decades of ruin. This is not a frivolous argument. One particularly thoughtful conservative legal scholar, John O. McGinnis, wrote at the Liberty Fund’s *Library of Law & Liberty* that we “can hardly be confident that his appointments will make America great, but we can be pretty confident that Hillary Clinton’s will end the current project of making the Supreme Court a court of law rather than a dynamo of Progressive politics.” Thus, “even if there were only a substantial possibility that Trump will appoint justices in the mold of Scalia and Thomas or even Roberts, that chance differentiates him from Hillary Clinton.”

McGinnis takes care to concede that there “are many reasons for classical liberals to oppose Donald Trump in the general election,” setting aside the Supreme Court. But to many conservatives—maybe even most conservatives—the power to appoint Supreme Court justices and lower court judges is the single most important issue of this election.

In his post-presidential memoir, President Reagan reflected on the immense responsibility that presidents bear in appointing judges. “Even though you couldn’t always be certain how the judges you appointed would act once they put on black robes, I intended to do my best to choose the most responsible and politically neutral jurists I could find,” he wrote. He directed his attorney general and White House counsel accordingly: “The only litmus test I wanted, I said, was the assurance of a judge’s honesty and judicial integrity.”

Trump clearly does not take the judiciary so seriously. Will conservatives ultimately succeed in convincing President Trump to do the right thing, in spite of himself? ♦



'Queen Elizabeth going in procession to Blackfriars' (ca. 1600), attributed to Robert Peake

Semi-Gloriana

Queen Elizabeth I, warts and all. BY J.J. SCARISBRICK

This is a fine book by a distinguished Cambridge historian. And since lives of monarchs, let alone of one who has received as much attention as has Elizabeth I (1533-1603), are not exactly in vogue in today's academe, it is refreshingly old-fashioned.

It is also prodigiously learned. John Guy worked on it for years and is on top of the huge body of secondary works on the queen and her reign. Having started his career in the Public Record Office (now the National Archives), he has been able to master the equally formidable corpus of manuscript mate-

Elizabeth
The Forgotten Years
by John Guy
Viking, 512 pp., \$35

rial, some of it hitherto unread, much of it difficult to read and/or interpret—because heavily corrected, damaged, faded, or in cipher—in British, Belgian, and Spanish archives. And he has certainly uncovered much new material, debunked, flushed out, cracked open admirably.

It is a big book, just over 500 pages of text, and it covers only the last 20 or so years of Elizabeth's 44 on the throne. Its subtitle calls them "forgotten" ones—which is a bit odd, because they really have had plenty of atten-

tion. Perhaps a better subtitle would have been "The War Years" because, having drifted into war with mighty Spain as a result of (initially) surreptitious support of the revolt of Netherlanders against their Spanish overlord Philip II, those years were dominated by relentless and hideously expensive war on land and sea.

Philip and his successor planned no fewer than five seaborne attacks on England—though only the *Gran Armada* of 1588 came anywhere near success. English soldiers fought in the Low Countries and in France—then racked by civil war—on behalf of the Protestant cause. Famous Elizabethan seadogs such as Francis Drake and William Hawkins ravaged Iberian ports, raided Spanish settlements in Central

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America, and, lurking usually in the Azores, picked off Portuguese carracks returning home with cargoes of Asian silk, cotton, and spices and Spanish galleons laden with Peruvian silver. And then there was Ireland, where in 1594 the charismatic Earl of Tyrone raised a rebellion, which, with inevitable Spanish support, threatened to deliver the whole island from English rule.

Some of this—the endless wheeling, dealing, and campaigning—may not be an easy read for the beginner. But Guy is an accomplished storyteller. He writes crisp, jaunty prose and is at his best when telling us about Elizabeth herself, her turbulent court, her relations with ministers and favorites.

He has a fine eye for the telling detail: that it took the queen two hours to be dressed and get her makeup on, for instance; that she and her entourage once wolfed three oxen and 140 geese at a single breakfast when visiting a loyal subject; that to woo the Ottoman Turks she sent the sultan a mechanical organ that stood 16-feet tall; that she punched ladies of the bedchamber when they offended her; that she once hit her dazzling favorite the Earl of Essex in the face and told him “to go and be hanged,” whereupon he nearly drew his sword to strike her back; that the same Essex gave some books he plundered in Cadiz to a man called Bodley who was starting a library in Oxford; that towards her end, Elizabeth would “[stamp] her feet at ill news and thrust her rusty sword; at times into the arras in great rage” that she suffered for much of her life from migraines and insomnia and, in later age, arthritis; and that she was good at nicknames, some of them cruel (like “pygmy” for the deformed Robert Cecil).

She was highly intelligent, remarkably articulate, musical, fluent in French, Italian, and Latin, and a gifted off-the-cuff orator. She had more than her fair share of courage, and more than held her own in what was still an overwhelmingly man’s world. She was probably much more realistic about England’s place in the world than male jingoists like Drake and Hawkins, Walter Raleigh and Essex. The first two had been little better than

pirates in their early days, then privateers (i.e., licensed pirates). When open war with Spain broke out they, with Raleigh and Essex, launched wild plans for a “counter-Armada” that the queen never wholly approved. She refused to back Raleigh’s plan to discover the legendary El Dorado (thought to be somewhere in Guiana) and probably never really believed in his attempts to found an English colony in mainland America. Guy shows how, even as the first armada approached, she was trying to find a way to negotiate peace, and continually thereafter tried to extricate herself from ruinous warfare.

This is the heroic side of the woman. There was another one.

Elizabeth was vindictive, almost always ungrateful, often spiteful and disloyal. She had a ferocious temper, blew hot and cold unpredictably, and had a huge appetite for flattery. Though she wept when he died, the dour Lord Burghley and she had a stormy relationship and each often worked hard behind the other’s back. She always needed handsome men around her but was bad at choosing them: the flamboyant Robert Dudley, Earl of Leicester, the larger-than-life Raleigh, and the impossibly vain Essex. Had he not died a sudden natural death, Leicester might well have fetched up in the Tower of London. She sent Raleigh there for awhile, together with his seven-months-pregnant wife, when she heard he had married secretly.

Dashing Essex had nearly destroyed himself by disobediently coming back from Ireland, where he had led the campaign against Tyrone, and bursting into her bedroom to find her without wig (she was almost bald) or makeup. Essex finally did destroy himself by attempting to raise a force in London to unseat the Cecils and, so she thought, even depose her. (That was paranoia. Guy uncovers a fascinating story of how Essex tried to use Shakespeare’s *Richard II*, which tells of a tyrant being overthrown, to rouse Londoners to his cause and how, surely not by chance, Elizabeth saw what was almost certainly the same play a few weeks later and, identifying herself with Richard, finally signed Essex’s death warrant.)

When Mary, Queen of Scots, that most fatal of femmes fatales, fled for safety to England in 1568, she created huge problems for Elizabeth—and, perhaps, there was always going to be one way of dealing with them. But Mary was an anointed queen and Elizabeth preached and believed passionately in the divinity that “hedged” a royal person. Yet she signed Mary’s death warrant and then tried to put the blame for her death on others. She was supreme governor of the Church of England, source of all its jurisdiction, a Christian leader who was never afraid of invoking the Almighty, but had no hesitation in urging the Turks to press on with their jihad against Christian Spain in the Mediterranean.

Elizabeth knew little of her country. She ventured several times to Kenilworth and elsewhere in the Midlands, but never further north; she scarcely knew East Anglia and never visited Wales or the South-West. Most of her subjects never saw her; many probably did not know her name. She had no desire to be seen, no desire to be “popular.” Indeed, she once drafted a proclamation forbidding ordinary folk from coming near her under pain of imprisonment—lest they menaced her.

She had little or no interest in her subjects’ welfare. When terrible weather, bad harvests, and plague drove desperate Londoners to riot in the mid-1590s, she responded with a proclamation threatening ferocious punishments. She showed no gratitude to the ordinary soldiers and sailors who had suffered so much in order to defeat the Armada. She left her troops in France and the Low Countries unpaid for months—indeed, so hungry and stranded that many just ran away or died.

She loathed Parliament and summoned it only when she was desperate for new taxation. As far as she was concerned, granting it was its prime function. Certainly it had no right to tell her what to do, let alone to criticize. When Peter Wentworth, a conspicuous Puritan member of Parliament, asked (as many were asking) that she put an end to deeply worrying uncertainty and name her successor, she sent him to the Tower. When, in 1601, a particularly angry

House of Commons railed against the egregious abuse of granting monopolies to courtiers and the like on such things as the manufacture of playing cards and the import of currants, Elizabeth backtracked and promised reform—but had no intention of carrying it through, and carried on as before.

She was a haughty autocrat.

In modern parlance, she was also a badly “messed-up kid.” She had had a ghastly father who effectively ignored her, though she venerated him, and had never known a mother’s love. During her half-sister Mary’s hectic reign, she had been a virtual prisoner and feared, sometimes, for her life. Much worse, in the previous reign of her half-brother Edward, in her mid-teens she was almost certainly the victim of sexual abuse by her half-brother’s uncle, one Thomas Seymour.

Arguably this scarred her for life, and Guy seems to think that the prime reason why, to her subjects’ consternation, she never married was that she could not have abided being a mere queen-consort playing second fiddle to a king. But perhaps there was much more to it than that; perhaps Thomas Seymour was ultimately to blame. There is one intriguing fact, noted by Guy, that could strengthen this suggestion: In her will, Elizabeth ordered that her body should *not* be embalmed, as royal corpses usually were. Was this because she could not abide the idea of male hands ranging over her corpse? Perhaps.

There is something yet more serious to face. Guy is quite clear, where others have denied or hesitated, that Elizabeth knew about and, indeed, approved at least some of the unspeakable activities of the torturer Richard Topcliffe, a psychopath who reveled in racking prisoners, especially Roman Catholic priests, and/or suspending them by their handcuffed wrists for hours on end until he had extracted “confessions.” While racking one priest he had even boasted of having fondled the queen intimately. This was surely salacious fantasy, but there is no doubt now that Elizabeth acquiesced in at least some of Topcliffe’s worst atrocities. Guy has uncovered

irrefutable evidence in Cecil’s papers.

And there is yet worse to come. When carrying out the fearful punishment for treason—hanging, drawing, and quartering—it was customary to wait until the victim was dead before the disemboweling began. But on at least two occasions—the second when the gentle Jesuit (and exquisite poet) Robert Southwell was executed after horrendous torture by Topcliffe—Elizabeth ordered that the butchery should begin immediately after the first “drop”: that is, while the victim was still alive and could see the hangman hacking out his bowels and heart. That was sadism.

Guy has unmasked Elizabeth. Of course, the mythology will survive: The Virgin Queen, Good Queen Bess, Gloriana, and so on matter too much to English patriotism and folklore. But we now see the real Elizabeth as never before. Guy did not set out to debunk. He is simply a rigorous, dry-eyed scholar who was never going to be conned by the mythology. And despite everything, he still has a sneaking regard for her—as most of his readers will do.

Yes, Elizabeth I was, indeed, a remarkable woman, but a deeply wounded, flawed, and unlovable one. ♦



The God Effect

Maybe he knows if you've been bad or good.

BY LAWRENCE KLEPP

Is religion a natural instinct that, when kicked out the door, comes back (as Groucho Marx would say) innuendo? Are even cocksure secularists furtively religious and superstitious in spite of themselves, primed by evolutionary imperatives to pay unwitting tribute to spirits and gods?

The answer, according to the British evolutionary biologist Dominic Johnson, is a resounding, Darwinian yes. His iconoclastic book (if your icon is a New Atheist) argues that religious beliefs are not just illusory byproducts of our big, fanciful brains, expendable once scientific understanding is there to replace them.

On the contrary, they have been drilled into us by natural selection. Religious reflexes do all of us some good, including atheists—or vaguely agnostic skeptics like myself. They can enhance our control of wayward impulses and our alertness for behavior that threatens group well-being. So we can forget about simply flushing them out of our minds, which is what the New Atheists have been praying for.

God Is Watching You
How the Fear of God Makes Us Human
by Dominic Johnson
Oxford, 304 pp., \$27.95

Faith of some sort, Johnson suggests, guides us as much as reason. Religion is, therefore, nothing to be ashamed of: It’s doing what comes naturally.

It’s not breaking news that secularists trying to stamp out religious urges are pretty much in the position of puritans with respect to sexual urges. They keep succumbing to those urges themselves. Secular modernity has been manufacturing shiny new idols ever since the French Revolution, when pretty girls in white vestments, representing rationality triumphant, were solemnly venerated at Festivals of Reason.

During the 20th century, militantly antireligious regimes lost no time in coming up with their own inerrant scriptures, their iconic pictures of an exalted, redemptive leader on every wall, and a large, stupefying assembly of myths and devils. And Freudian psychology, dismissing religion as a collective neurosis, had its own totems and taboos, and soon

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splintered into rival dogmatic sects.

In contemporary America, people who think they've left religion behind run and work out religiously and adopt diets of drastic renunciation (vegan, organic, macrobiotic, gluten-free, raw, etc.) that outmatch the most austere monastic regimens. They frequent holistic healers and spiritually aware therapists. They meditate, do yoga, and wonder if they're losing their mindfulness.

"Supernatural beliefs," Johnson remarks, "cannot be in decline any more than any other ingrained characteristic of human nature. All that is happening is that cultural vehicles for those beliefs are manifesting themselves in new and different ways." He mentions the popular appetite for "science fiction, fantasy, ghost stories, conspiracy theories, extraterrestrial intelligence ... and new age religions," and the way that the animist and magical-thinking impulses of our Paleolithic ancestors reappear in our own superstitious habits. We attribute agency, including malice, to inanimate objects, look for fateful meanings and messages in coincidences, and engage in preparatory rituals, or favor lucky shirts or numbers, hoping they will bend the odds in our favor.

Since I've long believed that most people are drawn to myths, not facts, and revere or revile symbols and archetypes, not muddled realities, I have no problem with Johnson's basic notion that we are bound to crave intimations of some supernatural something. What is more questionable (but still very interesting) about this book is the crucial role that it assigns to what both Enlightenment-schooled humanists and the gentler sort of religious believers like least about traditional religion: harsh and hellish supernatural punishments.

Religion, Johnson concedes, is a complex and highly variable phenomenon across the world, but if it has a universal essence, it's fear and

trembling. What was so vital to social cooperation that it got into our genes is the nervous feeling that Somebody Up There might not like us.

Drawing on game theory and controlled experimental ordeals arranged by social scientists, Johnson tells us that human beings are, like other animals, deeply motivated by fear, by a sense of danger. We are wired to perceive threats, and even to misperceive and exaggerate them, because through eons of evolution the cost of ignoring a possible threat was very high, while

Supernatural punishment of some sort appears, Johnson says, in virtually all cultures: "Without it, religion does not work."

And without religion, he implies, modernity does not work. Religions offer "an intimate relationship with God. ... People don't love big government and surveillance cameras." So there has been, since the 1970s, a resurgence of religious belief—in particular, fundamentalism—which the French scholar Gilles Kepel has called "the revenge of God." Kepel, in Johnson's paraphrase, regards this turn to religion as "a reflection of widening and deepening discontent with the modern world and its politics" that can be seen nearly everywhere.

In Johnson's view, this is inevitable. The old or new atheist vision of modernity—a scientifically guided, religion-free world—is a mirage. Science can study religion, accommodate it, explain things without it, but not replace it: "The human mind," in the words of Edward O. Wilson, "evolved to believe in gods. It did not evolve to believe in biology."

So far, so good. But I suspect that what fundamentalism has in common with modern utopian and ultranationalist political movements and with New Age mystiques and quasi-religious

practices like meditation and vegetarianism is a quest for purity, not a yen for supernatural punishment. Modernity is complex, confused, urban, erotic, anxious: In its neon-lit light, ancient pieties can look pure. The same goes for peasants, primeval nature, and primitive tribes, Tibetan Buddhists, and ethereal diets. Or radiant, rational, religion-free futures.

So I think Johnson oversells his wrathful gods. Even in terms of social utility, as enforcers of human cooperation, they may not be indispensable and they can be counterproductive. He admits that the pagan Greek and



'The Awakening Conscience' (1853) by William Holman Hunt

missing out on a possible reward was usually not fatal.

As early human societies increased in population and complexity, selfish or disruptive behavior threatening group interests became harder to detect. It had to be policed where there were no police. Studies show that people behave less selfishly when they think they are being watched; they even behave better when there is a picture of an eye on the wall of the room that they're in. A God who saw through walls and pretenses was an eye that could never be evaded—although, Johnson adds, the idea of karma in Eastern religions worked just as well. The point is payback.

Roman gods, who were capricious and of doubtful moral character themselves, had virtually no bearing on the virtue of their worshippers. A sense of tradition, civic duty, honor, and shame sufficed to keep most people in line. The same can be said of many other societies, ancient and modern.

“Religion,” Johnson has to admit, “may or may not be the best way to engineer social cooperation. Like most things, it has pros and cons.” The cons are considerable. Many intensely religious societies (as he himself notes) have had persistently high crime rates. And others have directly encouraged horrific violence in the form of sectarian conflicts, persecutions, inquisitions, jihads, and severe, supernaturally sanctioned punishments. In the last sentence of his book, Johnson tells us that “in order to help self-interested and fallible humans get along, the gods have had to be cruel to be kind.” Maybe—but sometimes they have been cruel just to set a bad example. Fiercely punitive gods tend to create fiercely punitive people in their image. Sanctimonious sadism isn’t rare in human life.

In any case, even as a backhanded, evolutionary endorsement of religion, this book, with its stress on supernatural surveillance and retribution, won’t please most believers, who are moved by other things that faith offers: a sense of transcendence, a feeling of reconciliation with nature and God and others, communion, and compassion. And, at least, a strong hint of cosmic truth. Having quoted Voltaire’s famous remark that if there were no God, it would be necessary to invent him, Johnson just adds, in effect, that the invention has been genetically patented.

Still, *God Is Watching You* does raise some provocative questions about whether you can have a stable and durable society that disposes of shame and severe punishments, tolerates defiantly antisocial expression and behavior, and quarantines religion as a private enthusiasm, like golf or crossword puzzles. It gives us the old-time religion in a new light and warns us that, whatever we think of the god-fearing ghosts that haunt us, they may be here to stay. ♦



The Price of Disunion

What the British referendum reveals about Europe.

BY JAMES KIRCHICK

For Dalibor Rohac, the debate over the European Union—and, more precisely, the United Kingdom’s membership in it—is not an abstraction. A Slovak born at the tail end of the Cold War, he experienced his country (Czechoslovakia) liberating itself from the yoke of Soviet tyranny. Like many Central and Eastern Europeans of his generation, he grew up to be a free market enthusiast and admirer of Margaret Thatcher, beloved not only for her economic philosophy but also her uncompromisingly moral stand against communism.

Earning a graduate degree in Britain and progressing through fellowships at libertarian-leaning think tanks, he “internalized the canonical criticisms of the European project” that one regularly encounters in such milieus; namely, that the European Union is a hopelessly corrupt and inefficient institution managed by high-handed bureaucrats whose goal is nothing less than eliminating the nation-state.

Over time, however, Rohac came to appreciate the benefits, if not all the intrusive trappings, of the European Union. *Towards an Imperfect Union: A Conservative Case for the EU* is his succinct and compelling argument for European integration and unity at a moment of severe distress and challenge. Published on the eve of the referendum on Britain’s relationship to the EU, this book could not have been released at a more critical time.

In important ways, Rohac’s personal journey resembles that of Radek Sikorski, the Oxford-educated former

Towards an Imperfect Union

A Conservative Case for the EU

by Dalibor Rohac

Rowman & Littlefield, 202 pp., \$29

Polish foreign minister who, prior to his government service, worked at the American Enterprise Institute, where Rohac is now based. Delivering a speech before a friendly British audience in 2012, Sikorski enumerated how he could “tick every box required to be a life-long member of London’s most powerful Euroskeptics’ club,” from his fierce anticommunism (and resultant suspicion of ideologies insisting upon the sacrifice of national sovereignty to supranational governance structures) to his cabinet position in a government that “won plaudits for its financial rectitude.” Yet coming of age in the part of Europe that endured communism convinced Sikorski of both the “logic and justice” of the EU. Complaining about the body’s (albeit many) quotidian annoyances—as British Euroskeptics are wont to do—is simply not a luxury these Europeans can afford.

For many politically conservative Europe-watchers (this author included), a definitive moment in shaping attitudes towards the EU was Russia’s 2014 invasion of Ukraine. The West was taken completely by surprise, and its lackluster response to Moscow’s ongoing subversion by way of disinformation, pipeline politics, and old-fashioned Soviet-style “active measures” has revealed its dangerous divisions. Preserving freedom in Europe against an aggressively revisionist Moscow will require greater solidarity on the part of the EU’s 28 member-states.

James Kirchick, a fellow with the Foreign Policy Initiative, is the author of the forthcoming *The End of Europe*.

One clearly gets the sense that Russia's belligerence in its old stomping grounds sent a shiver up Rohac's spine, but his defense of the EU is much deeper than a mere ad hoc response to Moscow's latest antics. An economist by training, Rohac is ultimately convinced by (and convinces us of) the EU's pecuniary benefits, enumerated in three realms.

It secures the functioning of the European single market, restrains protectionist and authoritarian impulses of politicians, and provides a platform for peaceful collaboration between European states.

By sustaining a free-trade area and promulgating regulations that promote competition, the EU restrains national politicians' worst impulses. The much-reviled European Commission in Brussels acts against economic distortions and protectionism; without it, Rohac writes, "national policymakers would be more often tempted to tighten the screws of economic regulation to protect their domestic industries than to deregulate." In essence, the European Union is an economically liberal (in the European sense) project, which is why the far left (like British Labour party leader Jeremy Corbyn, whose support for the "Remain" campaign is perfunctory at best) has always been suspicious of it, rightly seeing the EU as hostile to economic nationalism and protectionism.

Though it may not be readily apparent to Western Europeans, who have enjoyed democracy, peace, and open trade longer than their Eastern neighbors, the EU's high democratic standards and economic vitality—which, while anemic since the 2008 crash, nonetheless remains attractive—jointly act as a "commitment device," enticing aspirant states to get their political and economic houses in order. Coming from a country that lived through a quasi-authoritarian rough patch between independence and EU membership, Rohac knows whereof he speaks when he praises the body's alluringly liberalizing effect.

What makes this volume a "conservative case" is that, in the

grand sweep of European history, the past 70 years of steady integration have been the most peaceful and productive. This is not, Rohac argues, a coincidence, and those Euroskeptics who believe that not merely halting but reversing the integrationist trend would produce even better outcomes are falling for a "nirvana fallacy."

That's usually a criticism directed at starry-eyed leftists, but here it fits: For far from being "conservative," undoing the EU would be fundamentally radical, as it is "difficult to think of any more ambitious, larger-scale alteration of the existing political order in Europe than that of discarding the project of European integration altogether." ♦



Rosenbergs Redux

A historian discovers what is already known.

BY RONALD RADOSH

There is a consensus among historians that Julius and Ethel Rosenberg were spies who gave the Soviet Union valuable military information and even prototypes of mechanisms related to the atomic bomb acquired from Ethel's brother, David Greenglass. Other atomic-related data were gathered from Russell McNutt, who worked on gaseous diffusion at the Oak Ridge nuclear facility that was part of the Manhattan Project.

Yet, every few years, another book comes out on the case, either challenging the couple's guilt or minimizing the nature of their espionage. A new approach is now emerging that focuses not on the question of their guilt but on Judge Irving Kaufman's decision to issue the death sentence, the Rosenbergs' execution, and the international protests that followed, which damaged America's reputation. The publication of *Executing the Rosenbergs* coincides with a recent campaign by the Rosenbergs' sons, Michael and Robert Meeropol, to pressure President Obama to posthumously exonerate Ethel Rosenberg, affirming that she was unfairly convicted and, therefore, not guilty. A pardon would be unacceptable to them because they consider their mother to be completely innocent.

Ronald Radosh is coauthor of The Rosenberg File.

Executing the Rosenbergs
Death and Diplomacy in a Cold War World
by Lori Clune
Oxford, 280 pp., \$29.95

There is also a consensus among historians, including those who acknowledge the Rosenbergs' guilt, that the death sentence was ill-advised. At the time, many thought the sentence extreme, especially when compared with the British sentence for atomic spy Klaus Fuchs, who served a relatively short time in prison and, when released, went to East Germany, where he had a successful career in physics working for its Communist regime. Moreover, executing the Rosenbergs gave the international Communist movement a major propaganda victory: It was able to arouse sympathy for the doomed couple and vilify America because the United States was executing a mother of young children, who would be left as orphans, and because many believed evidence of Ethel Rosenberg's actual guilt was either slight or nonexistent.

Lori Clune argues all of these points as if they were new revelations. Her main thesis is that there was opposition to the sentence in 80 cities abroad, and in 48 different nations, most of them in Europe. She makes much of her discovery of two lost boxes of State Department records



Ethel Rosenberg at home (1951)

in the National Archives that contain the reports from American diplomats abroad on the continuing protests.

Professor Clune deserves credit for conducting a prodigious amount of research in these records, as well as in various archival collections in the United States. But the results of her research contribute little that is new about the case and its aftermath except to fill in some details. Indeed, the reader becomes quickly numbed to messages from one diplomat after another, all saying much the same thing: European Communists are waging a major propaganda campaign and seem to be gaining influence; scores of luminaries are upset about the death sentence and want the American president to override it with executive clemency; the diplomats are unable to answer the protesters without State Department talking points about the case.

Only one of these reports, by my reading, is of importance: C. Douglas Dillon, the American ambassador to France, asking Secretary of State John Foster Dulles to reconsider the

Eisenhower administration's decision to refuse the Rosenbergs clemency. Dillon stressed that all the French were upset about what they considered "unjustifiable punishment," making a distinction between Julius's guilt and Ethel's apparent role as an accessory. The majority of the French, and not just Communists, he wrote, believed that the death sentence was "completely unjustified." Dillon also added that his embassy staff believed that if the "death sentence is carried out, this will have a most harmful long term effect on the opinion and attitude of the French people towards the United States." Communist propaganda would continue, he advised, but the long-term effect of the executions would damage all foreign views of the United States "and of our whole democratic processes."

Dillon's analysis is the most comprehensive and insightful of all the messages Professor Clune cites. The rest of this volume, if the long messages are omitted, summarizes the origins and trajectory of the Cold War, the lack of response by both the Truman and

Eisenhower administrations to the foreign protests, and reverberations from the case at home and abroad. It is in these sections that Clune, who wants to appear nuanced and balanced, reveals her strong ideological view of both the Rosenberg case and the Cold War, downplaying the role the Communists (directed by Moscow) played in disseminating anti-American propaganda and encouraging protests.

For example, Clune accurately notes that the Vassiliev KGB files reveal how Moscow tried to orchestrate its campaign in the West, advising that arguments should be made about the trial's real purpose to create a "spy mania" that might turn the United States "completely fascist." But she argues that these points appeared only in Communist newspapers

for a few months, "or had little to do with the protest." She knows that the KGB advised that the propaganda be placed not in Communist papers but in the independent non-Communist press, but she doesn't realize that many of these supposedly non-Communist left-wing newspapers were actually controlled by Communists.

In the United States, for example, the campaign started when a fellow-traveling "independent" left-wing paper, the *National Guardian*, used all the KGB directives to sow doubt about the Rosenbergs' guilt. Its articles aroused the passions of its readers, and two of them began a major American effort to free the Rosenbergs and urge clemency. Clune blandly describes the *National Guardian* as a "progressive" weekly, not one run by pro-Soviet fellow travelers and edited by secret Communist party members.

A similar pattern emerged in Europe, especially in France. Clune writes that

the left-wing paper *L'Humanité* claimed the Rosenbergs were "ordinary young American non-Communists persecuted solely for their

progressive ideas,” and the charges were “trumped up” by Democrats “anxious” to prove they were “as good as Republicans at massacring ‘reds.’”

Clune does not seem to be aware that *L'Humanité* was not a non-Communist leftist paper but the official newspaper of the French Communist party. Later she writes, “Novelist Howard Fast’s article in the French left-wing paper *L'Humanité* . . . highlighted judicial irregularities and argued for the couple’s innocence.” Yet she fails to inform readers that Howard Fast was a member of the American Communist party and a prominent leader of its cultural section.

When Clune turns to the protests, she argues that American officials were surprised “when European protests began to spread beyond Communists to Socialists and other liberals.” This is not quite accurate: Ambassador James Clement Dunn had predicted that the Communist campaign for the Rosenbergs was about to be started with full force. Later he “credited the ‘Commie campaign’ with some success.” Dunn, of course, was correct and was not at all surprised by the outcome. To further support her effort to downplay the role of the Communists, Clune mentions that the leader of the Italian Socialist party, Pietro Nenni, had written to President Truman on behalf of the Rosenbergs. But Nenni was not an anti-Communist socialist; he was the very leader who had forged an alliance with the Communists in Italy, for which he received the Stalin Peace Prize in Moscow.

Professor Clune consistently portrays Communists as independent leftists, as well as exaggerating the numbers involved in protests. Concentrating on Canada, for example, she cites 75 members of the Canadian Rosenberg committee protesting at the American consulate in Montreal; but 75 people is not necessarily evidence of a mass protest. When 2,000 turned out for a rally in Toronto’s Massey Hall, the leaflet for the event (reproduced in the book) shows that Albert E. Kahn was the featured speaker. Kahn, another secret American Communist, was the author of

a book entitled *The Great Conspiracy* (1946), in which he tried to prove that the United States, during World War II, had been engaged in a giant conspiracy to smash the Soviet Union and destroy world socialism. (Kahn later started a publishing firm secretly funded by the Soviet Union, and since the release of the Venona papers, the evidence has indicated that he was most likely also a spy for the Soviets who gave them information about anti-Soviet Ukrainians living in America.)

Intent on heralding the protests in Europe, Clune actually writes that “Jewish leaders in Hungary supported the Rosenbergs”—as if Jewish leaders permitted to subsist in a Communist state, controlled by Moscow, had any other choice. And turning to America, she writes, “Famous African-American actors and singers, such as Paul Robeson and Harry Belafonte, also spoke out for the Rosenbergs.” Robeson, of course, was a secret Communist party member and outspoken apologist for the Soviet Union, and Belafonte was then (as he is now) a leftist sympathetic to the Soviet Union, now a supporter of Cuba and Venezuela. Clune also notes that a group called the Civil Rights Congress “led crowds picketing the national headquarters of the Republican Party.” But the CRC was the major Communist front organization in the United States, controlled and staffed exclusively by Communists.

Clune portrays both Harry Truman and Dwight D. Eisenhower as political leaders who were not sincerely for peace. She indicts Truman for getting tough with the Soviet Union and attributes his policies not to aggressive Soviet behavior leading to the Cold War but the desire to avoid charges that he was soft on communism: “Already under fire from the Republicans . . . Truman decided he could not be gentle with the only spies they were able to indict.” No evidence is offered to sustain this judgment, and of course, it was not Truman but the United States Attorney in New York that indicted the Rosenbergs after evaluating the evidence. Similarly, she claims Eisenhower’s 1953 “Chance for

Peace” disarmament speech, delivered shortly after Stalin’s death, “was not a sincere peace proposal” because it would “force” the Soviets to alter their Cold War policies. In Clune’s eyes, evidently, the Cold War was started not by Stalin but by the United States, whose Democratic and Republican leaders were always provoking the Soviet Union.

In her conclusion, Clune writes that Julius Rosenberg spied for the Soviets “as a way to fight fascism” and began his espionage “after the Germans invaded the Soviet Union.” She calls him “idealistic and naïve” because he continued to spy for Moscow after the Soviet Union had been proved to be an “authoritarian” regime. (“Totalitarian” regime, of course, would be a more accurate description.) And as for fighting fascism as a motive, Clune ignores the fact that, during the period of the Nazi-Soviet pact, Julius Rosenberg had asked another Communist friend, Abe Osheroff, to help him pass armament technology to Moscow. Moreover, the Rosenbergs weren’t simply fighting fascism: They were spying for the Soviet Union for five years after the end of World War II. Indeed, by 1948, the only way the Rosenbergs could have claimed antifascism as a motive is if they had considered the Truman administration to be fascist—which is what the American Communist party argued. It was loyalty to the Soviet Union, not opposition to fascism, that motivated Julius and Ethel Rosenberg.

Clune bemoans the fact that, by refusing to admit that they were spies, as their codefendant Morton Sobell did in 2008, the Rosenbergs “discredited the political left, both in the United States and around the world.” But in reality, the left discredited itself by taking positions and actions dictated by Moscow to gain support within America and the West for the Cold War waged by Stalin and his successors. Nor is Clune correct when, in her final paragraph, she argues that “Cold War terror and paranoia drove the U.S. government to prosecute the couple.” The Rosenbergs were prosecuted because they ran a Soviet spy network that did great damage to America’s national security. ♦

The Ice Is Melting

HBO's 'Game of Thrones' has outpaced the novels.

BY CHARLOTTE ALLEN

In late April, the sixth season of *Game of Thrones*, the ardently watched HBO adaptation of George R.R. Martin's elephantine, quasi-medieval fantasy-novel series, *A Song of Ice and Fire*, launched its 10-episode run. This has been the first season of the six in which *Thrones'* writer-producers D.B. Weiss and David Benioff have relied almost entirely on original narrative material that they have created themselves, producing plotlines that may or may not have anything to do with what Martin has in mind for his numerous characters. The reason for that is simple: Except for an isolated teaser-chapter or two, the 67-year-old Martin, a veteran sci-fi and television writer, hasn't published a word of the *Ice and Fire* series since 2011.

That was the year in which HBO aired the first season of *Thrones*. The idea was that if that first season proved successful—and it did, beyond anyone's expectations—each successive annual season would dramatize a single *Ice and Fire* novel, of which there were five by 2011. (The fifth, *A Dance With Dragons*, was published that July.) In April of last year, Martin declared that a long-promised sixth volume, *The Winds of Winter*, would be released in May of this year. But in a May entry on his blog, he admitted that he still hasn't finished *Winds*, and he declined to provide any information about a planned publication date. Martin has also promised that *Ice and Fire* will finally wind up with an as-yet-unwritten seventh novel, *A Dream of Spring*, but in recent interviews he has sounded cagey about that assurance as well.

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When he began serious work on the *Ice and Fire* series in 1994, he conceived of it as a trilogy, along the lines of *The Lord of the Rings*, J.R.R. Tolkien's magisterial fantasy work that has clearly inspired Martin's novels and has also provoked him to believe that he could do Tolkien one better. At this point, far from being a compact trilogy, *A Song of Ice and Fire* is starting to sound endless. It's an object lesson in what can happen when a writer not only bites off more narrative material than he can chew, but seems determined to create the fantasy epic to end all fantasy epics.

Nonetheless, the *Ice and Fire* series has its brilliant aspects, not least of which are Martin's hyper-fertile imagination and his ability to wield language to create a world that is at once dauntingly alien in time and place and tangibly real. Here are the opening lines of *A Game of Thrones* (1996), the first of the novels and the namesake of the HBO series:

The morning had dawned clear and cold, with a crispness that hinted at the end of summer. They set forth at daybreak to see a man beheaded, twenty in all, and Bran rode among them, nervous with excitement. This was the first time he had been deemed old enough to go with his lord father and his brothers to see the king's justice done. It was the ninth year of summer, and the seventh of Bran's life.

This is concise and elegant prose. It hints at medieval diction ("lord father," "king's justice") without laying it on thick, and it tells you that you are in some other place besides our planet Earth ("ninth year of summer"). The "man beheaded" both creates the requisite suspense and foreshadows violence to come—of which there is a superfluity in the *Ice and Fire* novels.

I admit that I, although never a fan of the fantasy genre, have joined some 60 million other readers worldwide as an *Ice and Fire* addict. For one thing, the sheer length of each of the six novels—*A Game of Thrones*, at 704 pages, is the shortest—assured me for several years that I would have enough reading material for many an airplane trip. And as a medievalist with a Ph.D., I've marveled at Martin's ability to evoke a huge and rich range of medieval places and cultural phenomena.

But it's an understatement to say that the *Ice and Fire* novels have their *longueurs*—and ever more of them as the series progresses. Martin seems to be a prisoner of his own inventiveness. He can't resist giving each of his many characters not only a place in the narrative but a complete backstory and cast of supporting characters, each of whom must have his own backstory and supporting cast. *Ice and Fire* is like the nursery rhyme about going to St. Ives and meeting the man with seven wives: "Every wife had seven sacks, and every sack had seven cats, and every cat had seven kits." And every kit has a signature weapon, a sexually proficient mistress, and a coat of arms that Martin must laboriously explicate.

Part of Martin's problem is that he divides the novels into long chapters, each told from one of his characters' points of view—which means that he feels obliged to devote full attention, in turn, to each of them. In *A Game of Thrones*, the tightest in construction, the number of such "viewpoint characters" is a manageable nine. But by the time Martin gets to *A Dance with Dragons*, he has ballooned them up to 31. There are entire families and kingdoms I could do without. (Please, no more Dorne!)

Indeed, there is only one family of completely compelling interest in *Ice and Fire*: the ambitious and morally complex Lannisters, as they strive either to be powers behind the throne or to sit on it. The most interesting Lannister of all is the despised second son, Tyrion, a misshapen dwarf (Peter Dinklage in the HBO *Thrones*) flawed by his weakness for wine and prostitutes but blessed with a superior brain that enables him to see through

the schemes of others and a touching pity for the weak victims of the more ruthless Lannisters. If Martin kills off Tyrion, I plan to stop reading.

In a 2014 interview, back when the release of *The Winds of Winter* seemed just around the corner, Martin faulted Tolkien, whose mythic sensibility he otherwise admired, for what he called Tolkien's "very medieval philosophy: that if the king was a good man, the land would prosper." Martin's apparent determination to improve upon what he regards as Tolkien's simplistic reading of human history has inspired him to a grimmer historical realism and a more thorough moral ambiguity. Martin was a conscientious objector during the Vietnam war, and the battles he narrates in *Ice and Fire* are slaughterfests that gruesomely re-create what medieval hand-to-hand combat with razor-sharp blades was actually like.

This is fair enough. But Martin overindulges in the grit and garishness. He parades before us a series of villains each more sadistically happy to mutilate human flesh than the last. As for his "good" characters, the consequences of their inevitable mistakes of judgment are invariably unforgiving. Add to the ubiquitous butchery the many detailed and often creepily voyeuristic sex scenes in *Ice and Fire* (replicated and even amplified in the HBO series) and you know you're not in the Shire anymore.

Martin also exhibits his own brand of simplistic sentimentalism. One of his central but most tiresome characters is the Princess Daenerys, sold as a teenager by her throne-seeking brother to a studly Genghis Khan-like warlord. That—plus said warlord's masterly taking of her virginity on their wedding night (inexplicably portrayed as rape on HBO)—is the last time Daenerys elicits any reader interest. The warlord soon dies, and Daenerys, accompanied by some adopted dragons, travels around freeing slaves,

yammering about her own moral superiority, and otherwise playing the liberal do-gooder, a nubile combination of Eleanor Roosevelt and Mrs. Jellyby.

In another obvious nod to political correctness, Martin has peopled his novels with a number of implausibly proficient female warriors. Yes, there was a real-life Joan of Arc—perhaps a model for the most likable of these

only an already-bestselling author could sell to his publishers.

Not surprisingly, the combination of Martin's prolific output and his dilatoriness in producing it has forced HBO's Weiss and Benioff to hurry their series to some kind of resolution, if only to keep the actors who play the parts (especially the child actors) from looking too old. The first season



Peter Dinklage, Conleth Hill in 'Game of Thrones'

creations, the girl-knight Brienne—but the others seem to owe more to feminist demands for more "strong women" in fantasy than to any reality, medieval or otherwise.

The *Ice and Fire* series was already getting out of hand by the year 2000, when Martin published *A Storm of Swords*, its 1,008 pages well exceeding those of *A Game of Thrones* and its successor, the 784-page *Clash of Kings* (1999). The next manuscript that Martin turned in would have yielded a whopping 1,809 printed pages. He was unwilling simply to divide it in two. Instead, he broke out some of the manuscript's viewpoint narratives into a fourth novel, the 784-page *Feast of Crows* (2005), saving the rest for the 1,056-page *Dance of Dragons*. The awkward format of two novels proceeding more or less synchronically, except published six years apart, was one that

of *Thrones* hewed closely to the story line of *A Game of Thrones*, but in subsequent seasons, Weiss and Benioff have killed off and/or conflated characters, telescoped incidents, and otherwise substantially altered Martin's narrative—even before they ran out of narrative to work with.

I certainly hope that George R.R. Martin manages to finish *Ice and Fire* one of these days, if only to spare himself the ignominy of having a fan-fictioner complete the job for him. Hubris begets catastrophe, and you could say there was plenty of hubris in Martin's assumption that he could better the work of every fantasy author who preceded him. But he is too gifted a writer to deserve the remorseless fate of so many of his own well-intentioned, but deeply flawed, characters. "Winter is coming" is *Ice and Fire*'s watchword. But not, I hope, for Martin himself. ♦

"We can provide health care for everybody. We can make sure families can afford college again. These are exciting things."

—Clinton campaign manager Robby Mook on CNN, responding to the question, "What will be [Hillary Clinton's] message to excite people?" June 7, 2016

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Clinton promises to 'electrify' voters

POLICY MEETS PYROTECHNICS

Health care forum, then laser-light show

BY FRANK VITCHARD

MANCHESTER, N.H. — The sparks were literally flying at a Clinton town hall event this evening. Following a discussion of ways to strengthen the Affordable Care Act, spark fountains exploded on stage, resulting in a stampede for the exits. But Democratic presidential candidate and presumptive nominee Hillary Clinton reassured her supporters this was no accidental fire. On the contrary, it was her way of generating excitement.

Not everyone, however, was enthused. "One minute we were talking about preexisting conditions, and the next we hear this 'boom!' and bright lights and sparks everywhere," said one Manchester resident. "I thought something had gone terribly wrong. And that screeching noise coming from the speakers—it was so frightening." (A campaign staffer later said this



CLINTON, SWIMFINFAN

Lasers dance behind Hillary Clinton in New Hampshire Thursday.

noise was the candidate's slaughter.)

Earlier in the day at an elementary school gymnasium, Senator Clinton talked to voters about education reform. Just as she concluded her remarks on making college tuition affordable, Clinton leapt off the stage and, thanks to invisible wiring, flew over a crowd of children. The intention, according to campaign manager Robby Mook, was to remind the students of Peter Pan. Except the candidate was wearing black, not green. Suddenly the room was filled with

shrieks of terror and children scattering. "She was like that bad lady from 'The Wizard of Oz,'" said one tearful second-grader.

"It's a work in progress," Mook conceded. "But I guarantee you no one will doze off at our rallies." The next stop on the campaign trail is a movie theater in Easton, Penn., where Clinton will discuss raising the minimum wage. Her visage will appear on a giant, 52-foot-high

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